

Environmental Quality

Environmental Effects of Army Actions

Headquarters
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SUMMARY of CHANGE

AR 200-2

Environmental Effects of Army Actions

This revision--

- o Clarifies organizational responsibilities for assessing environmental impacts of Army actions (chap 1).
- o Clarifies the term "proponent" and how the proponency is defined for the purposes of the Army National Guard (para 1-6 and glossary).
- o Deletes the former requirements of affixing the legend "RCS DD-M(AR)1327" (chap 2-2).
- o Requires mitigation measures identified in the environmental assessment and Environmental Impact Statement to become a line item in the proposed budget (para 2-7).
- o Defines the role of the life cycle environmental document (para 3-1).
- o Defines Army policy relative to compliance with the National Environmental Policy Act when projects are undertaken pursuant to Comprehensive Environmental Response Compensation Liability and Superfund Amendments Reauthorization Act (para 3-1).
- o Emphasis the role of the Deputy for Environmental, Safety, and Occupational Health in approval of EISs (para 6-5).
- o Incorporates a categorical exclusion screening criteria as a requirement for application (app A).
- o Deletes the former categorical exclusion for forestry operations (para A-3).
- o Deletes the former categorical exclusion for proposed action determined to be insignificant (A-28).
- o Adds methodology for implementing a monitoring and mitigation program (app F).

Effective 23 January 1989

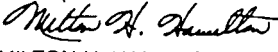
Environmental Quality

Environmental Effects of Army Actions

By Order of the Secretary of the Army:

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History. This UPDATE printing publishes a revision of this publication. Because the publication has been extensively revised, the changed portions have not been highlighted.

Summary. This regulation establishes policy, procedures, and responsibilities for assessing the environmental effects of Army

actions. It implements the Council on Environmental Quality's National Environmental Policy Act regulations, Executive Order 12114, DOD Directive 6050.1, and DOD Directive 6050.7.

Applicability. This regulation applies to the Active Army, Army National Guard (ARNG), and the U.S. Army Reserve (USAR). It applies to proposals and activities of the ARNG involving Federal funding. It does not apply to the Civil Works functions of the Corps of Engineers nor to combat or combat-related activities in a combat zone.

Proponent and exception authority. Not applicable

Army management control process. This regulation is subject to the requirements of AR 11–2. It contains internal control provisions but does not contain checklists for conducting internal control reviews. These checklists are being developed and will be published at a later date.

Supplementation. Supplementation of this

regulation and establishment of command and local forms are prohibited without prior approval from the Army Environmental Office, WASH DC 20310–1000.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent agency of this regulation is the Office of the Chief of Engineers. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA, WASH DC 20310–1000.

Distribution. Active Army, C; ARNG, A; and USAR, A.

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* This regulation supersedes AR 200–2, 1 September 1981.

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Glossary

Chapter 1 Introduction

1-1. Purpose

This regulation sets forth policy, responsibilities, and procedures for integrating environmental considerations into Army planning and decisionmaking. It establishes criteria for determining what Army actions are categorically excluded from requirements to prepare an Environmental Impact Statement (EIS) and lists applicable categorical exclusions (CX) in appendix A.

1-2. References

Required and related publications and referenced forms are listed in appendix B.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

a. The Secretary of the Army (SA) has designated the Assistant Secretary of the Army (Installations and Logistics (ASA (I&L))) to serve as the Army's responsible official for National Environmental Policy Act (NEPA) matters.

b. The Chief of Engineers (COE) has the responsibility for coordinating and monitoring NEPA activities within the Army. Through the Assistant Chief of Engineers (DAEN-ZC), the Army Environmental Office is the Army Staff (ARSTAF) point of contact (POC) for environmental matters.

c. The Assistant Chief of Engineers (ACE) will—

(1) Provide assistance to Army agencies in completing environmental analysis and documentation through identifying and quantifying environmental impacts and selecting impact mitigation techniques.

(2) In cases of multiple Army agency involvement, designate a single agency or lead office with responsibility for preparing and processing environmental documentation; assign Army lead agency responsibility in cases of non-Army agency involvement.

(3) Review and comment on Environmental Impact Statements (EISs) submitted by Army, other Department of Defense (DOD) components, and other Federal agencies.

(4) Monitor proposed Army policy and program documents that have environmental implications to determine compliance with NEPA requirements and to ensure integration of environmental considerations into the decisionmaking process.

(5) Maintain liaison with the Office of Management and Budget, Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), and other Federal, State, and local agencies on environmental policies that may affect the Army. This liaison assists in identifying and evaluating applicable regulatory policies for proposed actions.

(6) Maintain a current record from which access to EISs may be obtained from the proponent. Also, maintain a record of actions of national concern that resulted in a Finding of No Significant Impact (FNSI).

(7) Establish procedures for retention of EISs prepared by the Department of the Army (DA).

(8) Require the revision or preparation of environmental documents, as appropriate, to ensure adequate consideration of environmental impacts when a proponent has failed to do so.

(9) Comment on EISs within those areas of assigned staff responsibility and technical capability.

(10) Resolve issues in determining if a public hearing or public scoping meeting is appropriate for the proposed action and assign the responsibility to an appropriate office.

d. Heads of Headquarters, Department of Army (HQDA) agencies will—

(1) Apply policies and procedures herein to programs and actions within their staff responsibility except for State funded operations of the Army National Guard (ARNG).

(2) Task the appropriate component with preparation of environmental assessments (EAs) and/or EISs. Proponents (defined in the glossary) may conduct their preparation in-house, through contract, or pursue indirect preparation with the assistance of supporting U.S. Army Corps of Engineers (USACE) Districts.

(3) Initiate the preparation of necessary environmental documentation, assess proposed programs and projects to determine their environmental consequences, and initiate environmental documents for circulation and review along with other planning or decision-making documents. These documents include a completed DD Form 1391 (Military Construction Project Data), Case Study and Justification Folder, Integrated Program Summary, and other documents proposing or supporting proposed programs or projects.

(4) Coordinate appropriate environmental documents with ARSTAF agencies.

(5) Designate, record, and report the identity of the agency's single POC for NEPA considerations to the Army Environmental Office.

(6) Assist in the review of environmental documents prepared by DOD and other Army or Federal agencies, as requested.

(7) Coordinate proposed directives, instructions, regulations, and major policy publications that have environmental implications with the Army Environmental Office.

(8) Maintain the capability (personnel and other resources) to comply with the requirements of this regulation.

(9) Prepare and maintain a record of decision (ROD) on each EIS for which they are the staff proponent.

e. The Assistant Secretary of the Army (Financial Management) will establish procedures to ensure compliance with requirements for environmental exhibits and displays of data in support of annual authorization requests.

f. The Judge Advocate General will provide legal advice and assistance in interpreting NEPA and CEQ regulations. The Judge Advocate General will interface with the Army General Counsel, Corps of Engineers General Counsel, and the Department of Justice on NEPA related litigation.

g. The Surgeon General is responsible for environmental review related to the health and welfare aspects of proposed EISs submitted to HQDA.

h. The Chief of Public Affairs is the POC for media inquiries of national significance. The Chief will—

(1) Provide guidance on issuing public announcements such as FNSI, Notices of Intent (NOI), scoping procedures, Notices of Availability (NOA), and other public involvement activities.

(2) Review and coordinate planned announcements on actions of local or national interest with appropriate ARSTAF elements and the Assistant Secretary of Defense for Public Affairs (OASD (PA)).

(3) Provide public affairs guidance in conducting environmental programs.

(4) Be POC for media inquiries that are of national significance.

(5) Issue press releases that coincide with the publication of FNSIs, NOIs, and NOAs.

i. The Chief of Legislative Liaison will notify members of Congress of impending EISs and EAs of national concern.

j. Major Army Command (MACOM) commanders, Chief, National Guard Bureau, and heads of agencies will—

(1) Monitor proposed actions and programs within their commands.

(2) Task the appropriate component with preparation of EAs and EISs and development of public involvement activities. Proponents may delegate authority to conduct their preparation in-house, through contract, or pursue indirect preparation with the assistance of supporting U.S. Army Corps Engineers Districts.

(3) Assure that appropriate environmental documentation is prepared and forwarded to the appropriate proponent.

(4) Apply policies and procedures set forth in this regulation to programs and actions within their command and staff responsibility.

(5) Initiate the preparation of necessary environmental documentation and assess the environmental consequences of proposed programs and projects.

(6) Circulate and review environmental documents at the same

time with other planning or decisionmaking documents. These related documents include a completed DD Form 1391, Case Study and Justification Folder, Integrated Program Summary, and other documents proposing or supporting proposed programs or projects.

(7) Coordinate appropriate environmental documents and public affairs initiatives with HQDA agencies and the Army Environmental Office.

(8) Designate, record, and report the identity of the agency's single POC for NEPA considerations to the Army Environmental Office.

(9) Assist in the review of environmental documents prepared by DOD and other Army or Federal agencies, as requested.

(10) Coordinate proposed directives, instructions, regulations, and major policy publications that have environmental implications with the Army Environmental Office.

(11) Maintain the capability (personnel and other resources) to comply with the requirements of this regulation. (See sec 2, part 1507 title 40, Code of Federal Regulations (40 CFR 1507.2).)

(12) Prepare and maintain a ROD on EISs for which they are the staff proponent.

(13) Develop public affairs initiatives, when appropriate, for actions requiring EAs and EISs.

k. Installation, activity, and unit commanders will accomplish responsibilities listed in j (1) through (3), (5), (7), and (9) above.

1-5. Policies

a. The DA will endeavor to ensure the wise use of natural resources on Army land. The DA will match military mission activities with the ecological compatibility of the land and natural resources in order to maintain resources for realistic training, while minimizing the adverse impact on the human and natural environment. Decisionmakers will be cognizant of, and responsible for, the impact of their decisions on cultural resources; soils, forests, rangelands, water and air quality, and fish and wildlife; as well as other natural resources under their stewardship.

(1) The DA will identify significant environmental effects of proposed programs and projects in adequate detail. These effects will be considered in the decision process along with technical, economic, and other necessary factors. DA will carry out the mission of national security in a manner consistent with NEPA and other applicable environmental standards, laws, and policies.

(2) DA will employ all practicable means consistent with other essential considerations of national policy to minimize or avoid adverse environmental consequences and attain the goals and objectives stated in sections 101 and 102 of NEPA. (See app C.)

b. Environmental considerations will be integrated into the decisionmaking process to ensure that—

(1) Major decision points are designated for principal programs and proposals likely to have a significant effect on the quality of the human environment, while providing for the NEPA process to coincide with these decision points.

(2) Relevant environmental documents, comments, and responses accompany the proposal through the existing Army review and the decisionmaking process. The Army will integrate NEPA requirements with other planning and environmental review procedures required by law or Army practice so that review of environmental considerations is concurrent rather than consecutive.

(3) The alternatives considered are within the range of alternatives discussed in relevant environmental documents.

c. Worldwide and long-range character of environmental problems will be recognized, and where consistent with national security requirements and United States (U.S.) foreign policy, appropriate support will be given to initiatives, resolutions, and programs designed to maximize international cooperation in protecting the quality of the world human environment. In accordance with Executive Order 12114, DOD Directive 6050.7, and chapter 8 of this regulation, an environmental planning and evaluation process will be incorporated into Army actions that may significantly affect global commons, environments of other nations, or any protected natural or ecological resources of global importance. (See chap 8.)

d. Laws, other than NEPA, that require the Army to gain approval of other Federal, State, or local Government agencies before taking actions that may have environmental consequences will be obeyed. However, compliance does not relieve the responsible official from preparing environmental impact analyses and processing necessary environmental document. NEPA compliance is required unless existing law, applicable to a specific action or activity, prohibits, exempts or makes compliance impossible.

e. When appropriate, environmental documentation to consider operations security principles and procedures described in AR 530-1 will be reviewed and documented on the cover sheet or signature page.

1-6. Procedures

a. The Assistant Chief of Engineers retains a copy of each draft and final EIS (Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS)) prepared by the Army. The EIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid. The EIS is then deposited with the National Archives and Records Service, General Services Administration.

b. DA agencies are encouraged to draw upon the special expertise that is available within the medical department, including the U.S. Army Environmental Hygiene Agency (AEHA), to identify and evaluate environmental health impacts.

c. Military Construction Army/Military Construction ARNG (MCA/MCAR) funds may not be used for preparation of environmental documents. Operations and Maintenance/Operation and Maintenance, ARNG (OMA/OMAR) or other operating funds are the proper sources of funds for environmental document preparation.

d. The proponent for federally funded ARNG actions is the National Guard Bureau (NGB) division in whose area of responsibility the action rests. For instance, National Guard Bureau-Installations Division (NGB-ARI) would be the proponent for proposed training activities. The NGB division proponent performs the actions described in this section with the States or territories affected by the proposed action.

e. In specific cases, such as the construction of a water treatment facility or a flood control plan, the engineer could be the proponent. The engineer and/or his environmental management staff should advise proponents as to the format and technical data that must be considered in the environmental document. The engineer's environmental management staff is, however, responsible for reviewing each environmental document for compliance with NEPA and appropriate Army and/or ARNG regulations. No matter who prepares the environmental document, the proponent remains responsible for its content and conclusions.

f. The decisionmaking process often subjects proposal decisions to review and/or approval by higher level authorities including HQDA proponent (defined in the glossary); therefore, the review and approval of the environmental document follows the same channel of review and approval as that of the proposed action. This does not apply to federally funded ARNG actions since the NGB division, which is the proponent for such actions, is also the HGDA proponent.

Chapter 2 National Environmental Policy Act (NEPA) and the Decision Process

2-1. Introduction

a. NEPA establishes policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. (See app C for a copy of NEPA.) The CEQ issued regulations to implement the procedural provisions of NEPA and they are provided in appendix E. Implementing procedures to CEQ regulations are contained in DOD Directive 6050.1 (applicable in the continental United States

(CONUS)) and DOD Directive 6050.7 (applicable outside the continental United States (OCONUS)).

b. The NEPA process includes the systematic examination of possible and probable environmental consequences of implementing a proposed action. To be effective, integration of the NEPA process with other Army project planning will occur at the earliest possible time to ensure—

- (1) Planning and decisionmaking reflect environmental values.
- (2) Policies and goals of paragraph 1–4 are implemented.

(3) Delays and potential conflicts later in the process are minimized.

c. To achieve these actions, all Army decisionmaking that may have an impact on the human environment will use a systematic, interdisciplinary approach that ensures the integrated use of the natural and social sciences, planning, and the environmental design arts. (PL 91–190; Sec. 102(2)(A)). This approach allows timely identification of environmental effects and values in sufficient detail for evaluation concurrently with economic, technical, and mission-related analyses at the earliest possible step in the decision process. When EAs or EISs are undertaken, the economic and social impacts will be included in the analysis of total environmental impacts. However, these secondary impacts, unaccompanied by physical environmental impacts, should not determine whether or not to prepare an environmental document.

d. NEPA also requires the proponent of an action or project to identify and describe all reasonable alternatives to the proposed action or project. To assist in identifying reasonable alternatives, the proponent must consult appropriate Federal, State, and local agencies, and the general public.

e. These procedures will assist the decisionmaker in selecting a preferred course of action. They provide the relevant background information and subsequent analyses of the proposal's positive and negative environmental effects. The decisionmaker's written environmental evaluation is either a CX with a record of consideration (REC), an EA with a FNSI, or an EIS with a ROD. (See chap 3.)

2–2. Actions requiring evaluation

a. The types of projects or actions to evaluate for environmental impact include—

- (1) Policies, regulations, and procedures (for example, Army regulations and circulars).
- (2) New management and operational concepts and programs in areas such as logistics, research, development, test and evaluation, procurement, and personnel assignment.
- (3) Projects (for example, facilities construction, research and development for weapons, vehicles, and other equipment).
- (4) Activities (for example, individual and unit training, flight operations, overall operation of installation, or facility test and evaluation programs).
- (5) Requests for a Nuclear Regulatory Commission license (new, renewal, or amendment) or an Army radiation authorization.
- (6) Materiel development, acquisition, and/or transition.
- (7) Research and development in areas such as genetic engineering, laser testing, and electromagnetic pulse generation.
- (8) Installation restoration projects undertaken pursuant to section 104 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA). The National Oil and Hazardous Substances Contingency Plan (40 CFR 300), implements the requirements of CERCLA/SARA, and describes a formal process, the feasibility study (FS).

(a) The FS provides substantive and procedural standards to ensure full consideration of environmental issues and alternatives, and an opportunity for the public to participate in evaluating environmental factors and alternatives before a final decision is made.

(b) In most cases, when a FS is prepared in accordance with 40 CFR 300, a second NEPA document is not required. As a matter of policy, the organization preparing the FS will ensure the document

also complies with 40 CFR 1500–1508. The cover of the FS document and the subsequent ROD will contain the legend “ This document is intended to comply with the National Environmental Policy Act of 1969. ” All public notices announcing the availability of the FS will also note this intent. Installation Restoration Program actions in which an FS is not prepared in accordance with 40 CFR 300 will require appropriate environmental documentation.

(9) Requests for special use airspace in accordance with AR 95–50 that require Federal Aviation Administration approval (new, renewal, or amendment).

b. In addition to the above, certain activities supported by the Army through the following actions require proper environmental documentation:

(1) Federal contracts, grants, subsidies, loans, or other forms of funding such as Government owned contractor operated industrial plants and section 801/802 Housing, Military Appropriations Act of 1984, construction (via third-party contracting).

(2) Leases, easements, permits, licenses, certificates, or other entitlement for use (for example, grazing lease and grants of easement for highway right-of-way).

(3) Request for approval to use or store materials, radiation sources, hazardous and toxic material, or wastes on Army land. If the requester is non-Army, the responsibility to prepare the proper environmental documentation is that of the non-Army requester. If required, the requester will provide information needed for the Army review. The Army reviews and approves all environmental documentation before approving the request.

2–3. Environmental review categories

The following are the five broad categories into which a proposed action may fall for environmental review:

a. *Exemption by Law.* The law must apply to DOD and/or Army and must prohibit, exempt, or make impossible full compliance with NEPA (40 CFR 1500.6). (See para 2–5 for security exemptions.)

b. *Emergencies.*

(1) In the event of an emergency, the Army may need to take immediate actions that have environmental impacts, that may include immediate actions to promote national defense or security and actions necessary for the protection of life or property. In such cases the HQDA proponent will notify the Army Environmental Office, which in turn will notify the Office of the Assistant Secretary of the Army, Installations and Logistics (OASA (I&L)) who will coordinate with the Assistant Secretary of Defense for Production and Logistics (ASD (P&L)) regarding the emergency action. Time is of the essence so that OASA (I&L) may consult with the CEQ if necessary. A public affairs plan should be developed as soon as possible so that channels of communication remain open between the media, public, and the installation. In no event will Army delay an emergency action necessary for national defense, security, or preservation of human life or property to comply with this regulation or the CEQ regulations. State call-ups or ARNG during a natural disaster are excluded from this consultation requirement.

(2) These notifications apply only to actions necessary to control immediate effects of the emergency; other actions remain subject to NEPA review. (40 CFR 1506.11)

(3) After action reports may be required at the discretion of the OASA (I&L).

c. *Categorical exclusions (CX).* These actions (chap 4 and app A) normally do not require an EA or an EIS. The Army has determined that they do not individually or cumulatively have a significant effect on the human environment. Qualification for a CX is described in chapter 4 of this regulation.

d. *Environmental assessment (EA).* (See para 5–3 for actions normally requiring an EA.)

(1) If the proposed action is adequately covered within an existing EA or EIS, prepare a REC to that effect. (See fig 2–1.)

(2) If the proposed action is within the general scope of an existing EA or EIS, but requires additional information, prepare a new environmental document that considers the new, modified, or missing information. Incorporate by reference, existing documents and publish the conclusion (FNSI or NOI).

(3) If the proposed action is not covered adequately in any existing EA or EIS, or is of significantly larger scope than that described in the existing document, then prepare an EA followed by either a FNSI or a new EIS.

e. Environmental Impact Statement (EIS). (See para 6-3 for actions normally requiring an EIS.)

(1) If it is determined that the action is covered adequately in a previously filed FEIS, the REC must so state, citing the applicable FEIS by name and date. The REC is then attached to the proponent's record copy of that FEIS. As a general rule, a FEIS older than 3 years cannot be used in this manner, but must be supplemented.

(2) If the proposed action is within the scope of an existing FEIS, but was not covered in that document or not covered adequately, then the proponent must prepare supplemental documentation to that FEIS.

(3) If the proposed action is not within the scope of any existing EIS, then the proponent must begin the preparation of a new EIS.

2-4. Determining appropriate environmental documentation

a. The flow chart shown in figure 2-1 summarizes the process for determining documentation requirements.

b. The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will retain its own record keeping for RECs and RODs. (See 40 CFR 1506.3 for procedures to follow when adopting other documents.)

c. When an existing adequate EA or EIS is used in lieu of preparation of a new document, the REC should state the document title, date, and where it may be reviewed.

2-5. Classified actions

a. For public dissemination of environmental documents containing classified information, AR 380-5 will be followed.

b. Classified facts will be separated from unclassified facts and conclusions related to the proposed action. Unclassified portions of the action may then be processed routinely in accordance with this regulation. Classified portions will be kept separate for reviewers and decisionmakers with need-to-know as defined in AR 380-5 and *c* below.

c. Classification does not relieve a proponent of the necessity to assess and document the environmental effects of the proposed action. The HQDA proponent, in coordination with the Army Environmental Office and the Deputy Chief of Staff for Intelligence, Security Division (DAMI-CIS), may select a review team. The team may be drawn from the Army agency or office not connected with the proponent agency, or from agencies outside the Army. The review team's purpose is to provide an external review of classified environmental documents.

2-6. Integration with Army planning

a. Early Integration. The Army goal to integrate environmental reviews concurrently with other Army planning and decisionmaking actions avoids delays in mission accomplishments. To achieve this goal, proponents should provide complete environmental documents for early inclusion with any recommendation or report to decisionmakers (Master Plan, Natural Resource Management Plan, Remedial Investigation, FS, etc.). The same documents will be forwarded to the planners, designers, and/or implementers so that recommendations and mitigations on which the decision was based may be carried out.

b. Time limits. The timing of the preparation, circulation, submission, and public availability of environmental documents is of great importance in ensuring that environmental values are integrated in the planning and decision processes. It is important to remember that next to the project itself, a properly prepared EIS may require the longest time to complete.

(1) *Categorical exclusions (CX).* When a proposed action is categorically excluded from further environmental review (chap 4

and app A), the proponent may proceed immediately with that action.

(2) *Findings of no significant impact (FNSI).*

(a) If the proposed action is one of national concern, is unprecedented, or normally requires an EIS, the proponent will make the EA and FNSI available for public review 30 or more days prior to making a final decision. A news release is required to publicize the availability of the FNSI. If the action is of national significance, a simultaneous announcement that includes publication in the Federal Register (FR) must be made by HQDA.

(b) For proposed actions referred to in (a) above, the proponent must allow a 30-day period for public comment between the time that the FNSI is publicized (40 CFR 1506.6(b)) and the time the proposed action begins. In those cases where the 30 day wait jeopardizes the project, the additional comment period provides no public benefit, and none of the conditions of (a) apply, the period may be shortened with MACOM approval. In no circumstances should the public comment period for an EA/FNSI be less than 15 days.

(c) A deadline and POC must be included for receipt of comments in the FNSI and the news release.

(3) *Environmental Impact Statements (EIS).* The EPA publishes a weekly notice in the FR of the EISs filed during the preceding week. This notice usually occurs each Friday. A NOA reaching EPA on a Friday will be published in the following Friday issue of the FR. (Failure to deliver a NOA to EPA by close of business on Friday will result in an additional one week delay.) A news release publicizing the action will be made in conjunction with the notice in the FR. The following time periods calculated from the publication date of the EPA notice will be observed:

(a) Not less than 45 days for public comment on DEISs (40 CFR 1506.10(c)).

(b) Not less than 15 days for public availability of DEISs prior to any public hearing on the DEIS (40 CFR 1506.(c)(2)).

(c) Not less than 90 days total for public availability of the DEIS and FEIS prior to any decision on the proposed action. These periods may run concurrently (40 CFR 1506.10(b) and (c)).

(d) The time periods prescribed here may be extended or reduced in accordance with 40 CFR 1506.10(b)(2) and 1506.10(d).

(e) When variations to these time limits are set, the Army agency should consider the factors in 40 CFR 1501.8(b)(1).

(f) The proponent may also set time limits for other procedures or decisions related to DEISs and FEISs as listed in 40 CFR 1501.8(b)(2).

(g) The entire EIS process could require more than 1 year. (See fig 2-2.) Thus, it is important that the process begin as soon as the project is conceptualized and that the proponent coordinate with all staff elements who may have a role to play in the NEPA process. Most of this time is taken by the preparation of the DEIS and the revision and response to comments to prepare the FEIS.

(h) A public affairs plan should be developed that provides for periodic interaction with the community. There is a minimum public review time of 90 days between the publication of the DEIS and the announcement of the ROD. Army EISs are not normally processed in so short a time due to the internal staffing required for this type of action. After the availability of the ROD is announced, the action may proceed. Figure 2-2 indicates typical and required time periods for EISs.

c. Programmatic environmental review (tiering).

(1) Army agencies are encouraged to write programmatic environmental analyses when such programs are being considered for general application (40 CFR 1502.4(c), 1502.20 and 1508.23). This will eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad EIS or EA has been prepared and a subsequent EIS or EA is then prepared on an action included within the entire program or policy (particularly a site-specific action), it need only summarize issues discussed in the broader statement and concentrate on the issues specific to the subsequent action. This subsequent document will state where the earlier document is available.

(2) An example would be the assessment of a proposed major weapon system program. Development of an overall programmatic

EIS or EA for the life cycle of the system is recommended. Tiered EAs and EISs, as appropriate, would evaluate specific subphases such as testing, production, development, use, and ultimate disposal.

d. Scoping.

(1) When the planning for a Army project or action indicates a need for an EIS preparation, the proponent initiates the scoping process. (See chap 7 for procedures and actions to be taken during the scoping process.) This process determines the scope of issues to address in the EIS and identifies the significant issues related to the proposed action. During the scoping process the participants identify the range of actions, alternatives, and impacts to consider in the EIS (40 CFR 1508.25). For an individual action, the scope may depend on the relationship of the proposed action to other environmental documents.

(2) The extent of the scoping process, including public involvement, will depend on several factors. These factors include—

- (a) The size and type of the proposed action.
- (b) Whether the proposed action is of regional or national interest.
- (c) Degree of any associated environmental controversy.
- (d) Size of the affected environmental parameters.
- (e) Significance of any effects on them.
- (f) Extent of prior environmental review.
- (g) Involvement of any substantive time limits.
- (h) Requirements by other laws for environmental review.

(3) The proponent may incorporate scoping in the public involvement or environmental review process other than that required for an EIS. If so, a significant reduction in the extent of scoping incorporated is at the proponent's discretion.

e. Analyses and documentation. Environmental analyses and documentation required by this regulation will be integrated as much as practicable with other environmental reviews, laws, and executive orders (40 CFR 1502.25) and—

(1) Environmental analysis and documentation required by various State laws.

(2) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(3) Permitting and licensing procedures required by Federal and State law. For instance, the Clean Air Act, as amended (42 USC 57401 et seq.) and the Clean Water Act, as amended (33 USC 125 et seq.).

(4) Installation and Army Master Planning functions and plans.

(5) Installation management plans, particularly those that deal directly with the environment. These include the Natural Resource Management Plans (Fish and Wildlife Management Plan, Forest Management Plan, and Range Improvement or Maintenance Plan).

(6) Stationing and installation planning, force development planning, and materiel acquisition planning.

(7) Installation Compatible Use Zone (ICUZ) program.

(8) Hazardous waste management plans.

(9) Historic Preservation Plan as required by AR 420–40.

(10) Intergovernmental Coordination as required by AR 210–10.

(11) Asbestos Management Plans.

f. Relations with local and regional agencies.

(1) Installation, agency, or activity environmental officers or planners should establish planning relations with other agencies. These agencies include the staffs of adjacent local governments and State agencies. This will promote cooperation and resolution of mutual land use and environment-related problems.

(2) Preparation of a Memorandum of Understanding is desirable for promoting cooperation and coordination. This memorandum will identify areas of mutual interest, establish POCs, identify lines of communication between agencies, and specify procedures to follow in conflict resolution. Additional coordination is available from State and area-wide planning and development agencies, including those designated by AR 210–10. Thus, the proponent may gain insights on other agencies' approaches to EAs, surveys, and studies of the current proposal. These other agencies would also be able to

assist in identifying possible participants in scoping procedures for projects requiring an EIS.

2–7. Mitigation and monitoring

a. Identification in environmental documents. Only those mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified in environmental documentation (EA, FNSI, or EIS). Measures that the proponent implements as part of the selected action will be included in the environmental documentation. Mitigation measures that appear practicable, but unobtainable within expected resources or that some other agency (including non-Army agencies) should perform, will be identified as such in the environmental document. “Practicable” measures include, among others, actions that appear capable of being accomplished. Complete development or testing of the exact means of performing the action may not have occurred.

b. Consideration throughout the National Environmental Policy Act (NEPA) process. Consider mitigation throughout the NEPA process. When an EIS or EIS Supplement is prepared, the ROD will state specific mitigation measures taken to reduce or avoid the selected action's adverse environmental effects. For EAs, the FNSI will state, when applicable, the appropriate mitigation measures that will be implemented. The proponent must ensure such mitigation measures become a project line item in the proposal budget. Mitigations that are committed to in an EA, but that are eventually not funded, must lead to reevaluation of the project and the significance of its impacts. In addition, the FNSI will state those practicable mitigation measures that have not been adopted. (40 CFR 1502.2 (c)).

c. Assistance from cooperating non-Army agencies. Proponents may request assistance with mitigation when appropriate. Whether it is appropriate to request assistance is determined by whether the requested agency—

(1) Was a cooperating agency during preparation of an environmental document, or

(2) Has the technology, expertise, time, funds, or familiarity with project or local ecology necessary to implement the mitigation measure more effectively than the lead agency.

d. Implementing the decision.

(1) The proponent agency or other appropriate cooperating agency will implement mitigation and other conditions established in the EA or EIS or during its review, and committed as part of the FNSI or the ROD.

(2) Legal documents implementing the action (contracts, permits, grants, and so forth) will specify mitigation measures to be performed. Penalties against the contractor for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(3) A monitoring and enforcement program will be adopted and summarized in the ROD where applicable for any mitigation. (See app F for guidelines on implementing such a program.) Whether adoption of a monitoring and enforcement program is applicable (40 CFR 1505.2 (c)) and whether the specific adopted action is an important case (40 CFR 1505.3) may depend on such factors as the following:

(a) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited).

(b) Cases when the outcome of the mitigation measure is uncertain (for example, new technology).

(c) Projects in which major environmental controversy remains associated with the selected alternative.

(d) Cases when failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to Federal or State listed endangered or threatened species; important historic or archaeological sites that are either on, or meet eligibility requirements for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. Evaluation and determination of what constitutes serious harm in coordination with the appropriate Federal,

State or local agency responsible for each particular program must be made.

(e) The proponent will respond to inquiries from the public or other agencies regarding the status of mitigation measures adopted.

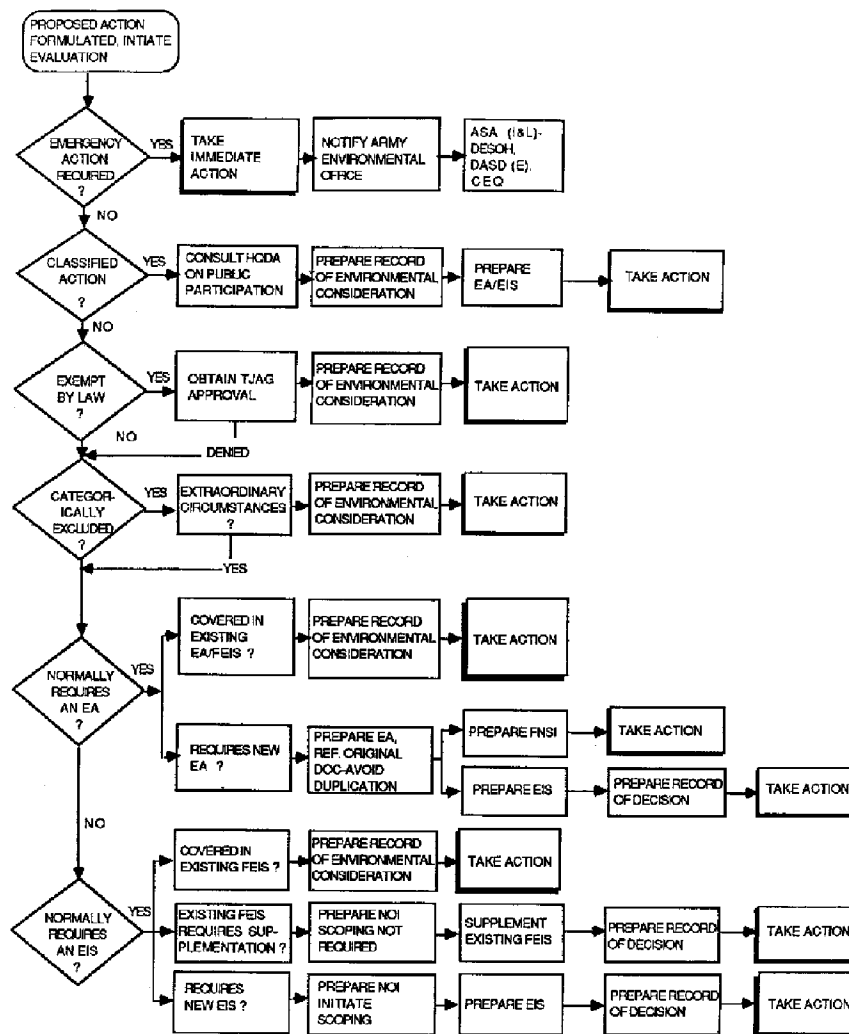


Figure 2-1. Flow chart summarizing process for determination of document requirements

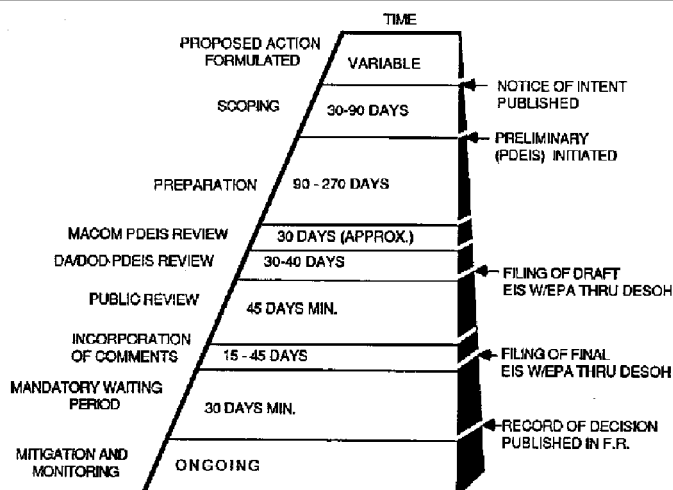


Figure 2-2. Time involved for preparing and processing an environmental impact statement

Chapter 3 Required Records and Documents

3-1. Introduction

The following records and documents are required:

a. Record of environmental consideration (REC). The REC describes the proposed action and anticipated timeframe, identifies the proponent, and explains why further environmental analysis and documentation is not required. It is a signed statement to be submitted with project documentation. It is used when the proposed action is exempt from the requirements of NEPA, or has been adequately assessed in existing documents and determined not to be environmentally significant. A REC is also used to document the use of those CX that require such records. (See fig 3-1 for format.)

b. Environmental assessment (EA). An EA is a document that—

(1) Briefly provides the decisionmaker with sufficient evidence and analysis for determining whether a FNSI or an EIS should be prepared.

(2) Assures compliance with NEPA, if an EIS is not required and a CX is inappropriate.

(3) Facilitates preparation of a required EIS.

(4) Includes brief discussions of the need for the proposed action, alternatives to the proposed actions (NEPA, sec. 102(2)(*e*)) (see app C), proposed and alternative actions environmental impacts, and a listing of persons and agencies consulted. (See chap 5 for requirements.)

c. Finding of no significant impact (FNSI). A FNSI is a document that briefly states why an action will not significantly affect the environment, thus voiding the requirement for an EIS. The FNSI will include a summary of the conclusions of the EA and will note any environmental documents related to it. If the EA is attached, the FNSI need not repeat any of the EA's discussion, but may incorporate it by reference. A FNSI is always signed by the decisionmaker. (See para 5-5 for processing.)

d. Notice of intent (NOI). An NOI is a public notice that an EIS will be prepared and considered. The NOI will briefly—

(1) Describe the proposed and alternative actions.

(2) Describe the proposed scoping process, including whether, when, and where any public meetings will be held.

(3) State the name and address of the POC who can answer questions on the proposed action and its EIS. (See paras 6-5 *a*, 6-7 *a*, and 7-3 for application.)

e. Environmental impact statement (EIS). An EIS is a detailed written statement required by NEPA for major Federal actions with significant environmental effects (42 USC 4321, Sec. 102(2)(*c*)). (See app C) (See chap 6 for requirements.)

f. Life cycle environmental document (LCED). The LCED is intended to be a programmatic assessment that addresses the known and reasonably foreseeable environmental impacts of a proposed item/system during all phases of development, production, use, and ultimate disposal of the item/system. The LCED may be in the form of an EA or an EIS, and must be supplemented to address additional significant environmental impacts as conditions change. The LCED will be prepared by the DA proponent/developer (or program manager) and is most frequently used within the materiel research, development, and acquisition community.

g. Record of decision (ROD). A public ROD is required under the provisions of 40 CFR 1505.2 after completion of an EIS. Nevertheless, the ROD is not considered to be an environmental document since the decision considers other factors in addition to environmental issues. (See para 6-5 *i* for application.)

3-2. Optional documents

The following additional documents may assist in the implementation of this regulation. These documents are optional, but their use is encouraged.

a. Environmental planning guide. Prepared prior to or at the outset of a major program concept exploration. It is a concise (for example, 10 page) document intended for use by the program planners and designers. It provides guidelines and supporting rationale by which planners and designers could prevent, avoid, or minimize adverse environmental effect through environmentally sensitive design and planning. Through appropriate language in the scope of work, contractors can be encouraged or required to use such an environmental planning guide.

b. Environmental planning record. This records the progress and process of environmental considerations throughout a given program's development. Ideally, it is a document that is written when the program commences. There is no set form; it may be a journal with periodic entries, a file of memoranda, trip reports, and so forth. This document is a visible track record of how environmental factors have actually been considered and incorporated throughout the planning process. Through appropriate language in the scope of work, contractors can be encouraged or required to prepare an environmental planning record, or parts thereof.

c. Environmental monitoring report. This report is prepared at one or more points after program or action execution. Its purpose is to determine the accuracy of impact predictions. It can serve as the basis for adjustments in mitigation programs and to adjust impact predictions in future projects.

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

To: (Environmental Officer)

From: (Proponent)

Project title:

Brief description:

Anticipated date and/or duration of proposed action: (Month/year)

Reason for using record of environmental consideration (choose one):

a. Adequately covered in an (EA, EIS) entitled (name), (dated).
The EA/EIS may be reviewed at (location).

OR,

b. Is categorically excluded under the provisions of CX _____, AR 200-2, appendix A, (and no extraordinary circumstances exist as defined in paragraph 4-3), because

(Date)

(Project Proponent)

(Date)

(Installation Environmental Coordinator)

*Variation from this format is acceptable provided basic information and approvals are included in any modified document.

Figure 3-1. Format for record of environmental consideration (REC)*

Chapter 4 Categorical Exclusions (CX)

4-1. Introduction

a. The use of CX is intended to reduce paperwork and delay and eliminate unnecessary EA and EIS preparation. CX is defined in the glossary.

b. The following criteria will be used to determine those categories of actions that normally do not require either an EIS or EA:

- (1) Minimal or no individual or cumulative effect on environmental quality.
- (2) No environmentally controversial change to existing environmental conditions.
- (3) Similarity to actions previously examined and found to meet the above criteria.

4-2. Determining when to use a CX

In order to use the CX provision, the proponent must take the following actions:

a. Determine whether the proposal is encompassed by one of the categories not normally requiring the preparation of an EA or EIS. (See app A.)

b. Determine if there are any extraordinary circumstances that may result in the proposed action having an impact on the human environment that would require an EA or EIS. These circumstances include:

(1) Greater scope or size than normally experienced for a particular category of action.

(2) Potential for degradation, even though slight, of already existing poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(3) Employment of unproven technology.

(4) Presence of threatened or endangered species and their habitats, archaeological materials, historical places, or other protected resources.

(5) Use of hazardous or toxic substances that may come in contact with the surrounding natural environment. Nevertheless, a categorical exclusion exists for use of hazardous and toxic substances under adequately controlled conditions within established laboratory buildings that are designed for, and in compliance with, regulatory standards. Adequately controlled conditions includes complying with AR 385-10 and all other applicable Army safety and preventive medicine regulations for the processing of hazardous and toxic substances, and complying with the Resource Conservation and Recovery Act (RCRA) for their disposal.

(6) Proposed actions affecting areas of critical environmental concern. These include, but are not limited to, prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, aquifers, floodplains, or wild and scenic river areas.

c. Determine whether all the screening criteria in appendix A are true for the proposal.

d. If the proposed action qualifies for one of the CX, no analytical environmental document is necessary. However, if a REC (fig 3-1) is required by the CX listing in appendix A, a REC will be completed and signed by the proponent. Consultation between the proponent and the installation environmental coordinator is required.

4-3. CX actions

Types of actions that normally qualify for CX are listed in appendix A.

4-4. Modification of the CX list

The Army list of CXs is subject to continual review and modification. Send, for review, requested additional modifications to the Army Environmental Office. Subordinate Army headquarters may not modify the CX list through supplements to this regulation. Upon approval, proposed modifications to the list of CXs will be published in the FR by the Army Environmental Office. This provides an opportunity for public review and comment.

Chapter 5 Environmental Assessment (EA)

5-1. Introduction

An EA is made to determine the extent of environmental impacts of a project and decide whether or not those impacts are significant. It is not required for actions that are subject to categorical exclusion or exclusion from environmental review by law. (See 40 CFR 1508.9.) The EA is described at paragraph 3-1 *b*.

5-2. Conditions requiring an EA (EA)

An EA is required when the proposed action has the potential for—

- a.* Cumulative impact on environmental quality when combining effects of other actions or when the proposed action is of lengthy duration.
- b.* Release of harmful radiation or hazardous/toxic chemicals into the environment.
- c.* Violation of pollution abatement standards.
- d.* Some harm to culturally or ecologically sensitive areas.

5-3. Actions normally requiring an EA

The following actions normally require an EA:

- a.* Special field training exercise or test activity on Army land of a nature or magnitude not within the annual installation training cycle.
- b.* Military construction, including contracts for off-post construction.
- c.* An installation pesticide, fungicide, herbicide, insecticide, and rodenticide-use program.
- d.* Changes to established installation land use that generates impacts on the environment.
- e.* Proposed changes in doctrine or policy that may have a potential environmental impact. (40 CFR 1508.18 (b)(1).)
- f.* Repair or alteration projects affecting historically significant structures, archaeological sites, or places on, or meeting, the criteria for nomination to the National Register of Historic Places.
- g.* Acquisition or alteration of, or space for, a laboratory that will use hazardous chemicals, drugs, or biological or radioactive materials.
- h.* Actions that could potentially cause soil erosion, affect prime or unique farmland, wetlands, floodplains, coastal zones, wilderness areas, aquifers or other water supplies, or wild and scenic rivers.
- i.* New weapon systems development and acquisition, including the materiel acquisition, transition, and release processes.
- j.* Development of installation master plan.
- k.* Development of natural resource management plans (land, forest, fish, and wildlife).
- l.* Proposals that may lead to the excessing of Army real property.
- m.* Actions that take place in, or adversely affect, wildlife refuges.

n. Proposals for energy conversion through forest harvest.

o. Field activities on land not controlled by the military. This includes firing of weapons, missiles, or lasers over navigable waters of the United States, or extending 45 meters or more above ground level into the national airspace. It also includes joint air attack training that may require participating aircraft to exceed 250 knots at altitudes below 3000 feet above ground level.

p. An action with local or regional effects on energy availability.

q. An activity that affects any species on, or proposed for, the U.S. Fish and Wildlife Service list of Threatened and Endangered Plant and Animal Species. Also, activities affecting any species on an applicable State or territorial list of threatened or endangered species.

r. Production of hazardous or toxic materials.

s. Installation restoration projects undertaken in response to the CERCLA. (See para 2-2 *a* (8) for a full discussion of the integration of NEPA and CERCLA/SARA.)

t. Operations and Maintenance/Army National Guard projects that will impact environmental quality.

u. Site specific deployment of life cycle systems meeting the threshold criteria for requiring an EA.

v. Special field training exercises or test activities off Army or DOD property that extend into the national airspace (45 meters above ground level).

w. Changes to established airspace use that generates impacts on the environment or socioeconomic systems, or creates a hazard to nonparticipants.

5-4. EA Components

a. The EA will be the responsibility of the proponent. The Army Environmental Office will advise and assist in the preparation of the EA. In the case of United States Army Reserve (USAR) environmental documentation, the supporting installation facility engineer is responsible for ensuring proper environmental documentation is prepared and will comply with the provisions of AR 140-475. The EA will include brief discussions of—

- (1) Purpose and need for the proposed action.
 - (2) Description of the proposed action.
 - (3) The alternatives considered (always including the "no action" alternative).
 - (4) Affected environment (baseline conditions).
 - (5) Environmental consequences of the proposed action and the alternatives.
 - (6) Listing of agencies and persons consulted.
 - (7) The conclusion, or finding, on whether the environmental impacts are significant. If the finding is that there are no significant impacts, a FNSI will be published. If the finding is that impacts are potentially significant, the EA should state that a NOI will be published leading to preparation of an EIS.
- b.* The EA, the FNSI, and all other appropriate planning documents will be provided to the appropriate decisionmaker for review and consideration. The signature page for the EA and FNSI package will be signed by the decisionmaker to indicate his or her review and approval.

5-5. Decision process

Every EA results in a FNSI or a NOI to prepare an EIS. Initiation of a NOI to prepare an EIS should occur at any time in the decision process when significant effects are determined.

a. The FNSI is a separate document (40 CFR 1508.13) that briefly presents reasons why an action will not have a significant effect on the human environment and, thus, will not be the subject of an EIS. The FNSI will contain a summary of the EA or have the EA attached. If the EA is attached, the FNSI may incorporate it by reference, thus avoiding duplication of discussion. The FNSI will reference other relevant environmental documents that are being or have been prepared. The FNSI must contain the following:

- (1) The name of the action.
- (2) A brief description of the action (including any alternatives considered).
- (3) A short discussion of the anticipated environmental effects.

(4) The facts and conclusions that have led to the FNSI.

(5) A deadline and POC for further information or receipt of public comments. (See para 7-1.)

b. The FNSI should not exceed two typewritten pages in length.

c. The FNSI will be made available to the public prior to initiation of the proposed action, unless it is excluded on a security basis. (See para 2-5 for security exclusions.) FNSIs that have national interest should be submitted with the proposed press release through command channels to Deputy of Environment, Safety, and Occupational Health (DESOH) for approval and subsequent publication in the FR. FNSIs having national interest will be coordinated with Office of the Chief of Public Affairs (OCPA). Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

d. For actions of only regional or local interest, the FNSI will be publicized in accordance with 40 CFR 1506.6(b) and paragraph 2-6 b (2) of this regulation. Distribution of the FNSI (30 days prior to initiation of the proposed action) should include any agencies, organizations, and individuals who have expressed interest in the project and others whom the proponent and preparers (defined in the glossary) deem appropriate.

5-6. Public involvement

a. Environmental agencies, applicants, and the public should be involved to the extent practicable in the preparation of an EA. When considering the extent practicable of public interaction (40 CFR 1501.4(b)), some of the factors to be weighed are—

- (1) Magnitude of the proposed project/action.
- (2) Extent of anticipated public interest.
- (3) Urgency of the proposal.
- (4) Any relevant questions of national security classification.

b. See paragraph 7-1 for additional public involvement information.

5-7. Public availability

Documents incorporated into the EA or FNSI by reference will be available for public review. Where possible, use of public libraries is encouraged. Operating hours of the chosen depository should extend beyond normal business hours.

5-8. Existing environmental assessments (EAs)

EAs are dynamic documents. To ensure that the setting, actions, and effects described remain substantially accurate, the proponent or installation environmental officer will periodically review existing documentation (environmental impact assessment (EIA) or (EA)) as an action continues. Preparation of a new environmental document is necessary if substantive changes have occurred.

Chapter 6 Environmental Impact Statement (EIS)

6-1. Introduction

An EIS is a public document with a primary purpose of ensuring that NEPA policies and goals are incorporated early into the programs and actions of Federal agencies. An EIS is required to provide a full and fair discussion of significant environmental impacts. Along with other project documentation, the EIS provides a basis for informed decisionmaking. Further, it allows public review and comment on the proposal.

6-2. Conditions requiring an EIS

An EIS is required when a proponent, preparer, or approving authority determines that the proposed action has the potential to—

- a. Significantly affect environmental quality or public health or safety.
- b. Significantly affect historic or archaeological resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, or aquifers.
- c. Have significant adverse effect on properties listed or meeting

the criteria for listing in the National Register of Historic Places, or the National Registry of Natural Landmarks. (The National Park Service, U.S. Department of Interior maintains the National Register).

d. Cause a significant impact to prime and unique farm lands, wetlands, floodplains, coastal zones, or ecologically or culturally important areas or other areas of unique or critical environmental concern.

e. Result in potentially significant and uncertain environmental effects or unique or unknown environmental risks.

f. Significantly affect a species or habitat listed or proposed for listing on the Federal list of endangered or threatened species.

g. Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

h. Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

i. Involve the production, storage, transportation, use, treatment, and disposal of hazardous or toxic materials that may have significant environmental impact.

6-3. Actions normally requiring an EIS

The following actions normally require an EIS:

a. Significant expansion of a military facility, such as a depot, munitions plant, or major training installation.

b. Construction of facilities that have a significant effect on wetlands, coastal zones, or other areas of critical environmental concern.

c. The disposal of nuclear materials, munitions, explosives, industrial and military chemicals, and other hazardous or toxic substances that have the potential to cause significant environmental impact.

d. The life cycle development of new materiel such as weapon systems that requires the construction and operation of new fixed facilities or the significant commitment of natural resources.

e. Land acquisition, leasing or other actions that may lead to significant changes in land use.

f. Continental United States (CONUS) realignment or stationing of a brigade or larger table of organization and equipment (TOE) unit during peacetime (except where the only significant impacts are socioeconomic with no significant biophysical environmental impact).

g. Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.

h. Major changes in the mission of facilities either affecting areas of critical environmental concern or causing significant environmental impact.

6-4. Format of the EIS

a. The EIS contain the following:

- (1) Cover sheet.
- (2) Summary.
- (3) Table of contents.
- (4) Purpose of and need for the action.
- (5) Alternatives considered, including proposed action.
- (6) Affected environment (baseline conditions).
- (7) Environmental and socioeconomic consequences.
- (8) List of preparers.
- (9) Distribution list.
- (10) Index.
- (11) Appendixes (if any).

b. The content of each section is discussed in greater detail in appendix D.

6-5. Steps in preparing and processing an EIS

a. *Notice of intent (NOI).*

(1) Prior to preparing an EIS (see fig 6-1), a NOI will be published in the FR and in newspapers with appropriate or general circulation in the areas potentially affected by the proposed action.

The Office of Legislative Liaison (OCLL) will be notified by the ARSTAF proponent of pending EISs so that congressional coordination may be effected. After the NOI is published in the FR, copies of the notice may also be distributed to agencies, organizations, and individuals, as the responsible official deems appropriate.

(2) Forward the NOI and the proposed press release to the HQDA proponent for coordination prior to publication. The ARSTAF proponent will coordinate the NOI with HQDA (Army Environmental Office, OCLL, and OCPA). The DESOH is the only person authorized to release an NOI to the FR for publication. A cover letter similar to figure 6-2 will accompany the NOI. An example NOI is at figure 6-3. The NOI initiates the scoping process; therefore, provide adequate response time for those wishing to comment on the NOI or participate in the scoping process. Chapter 7 discusses public participation requirements and options.

b. Lead and cooperating agency determination. As soon as possible after the decision is made to prepare an EIS, the proponent, if necessary, will contact appropriate Federal, State, and local agencies to identify lead or cooperating agency responsibilities concerning EIS preparation. At this point, a public affairs plan must be developed. In State ARNG actions that have any Federal funding, the National Guard Bureau (NGB) will be the lead agency for the purpose of Federal compliance with NEPA. The State may be either a joint lead or a cooperating agency, as determined by NGB.

c. Scoping. If determined that Army is the lead agency, the proponent will begin the scoping process described in paragraph 7-2. Portions of the scoping process may take place prior to publication of the NOI.

d. Draft Environmental Impact Statement (DEIS) preparation and processing.

(1) *Preliminary DEIS (PDEIS).* Based on information obtained and decisions made during the scoping process, the proponent will prepare the PDEIS. Forward 15 copies of the PDEIS to the HQDA proponent for circulation to OASA (I&L), Office of the Assistant Chief of Engineers (OACE), Office of the Judge Advocate General (OTJAG), Office of the Surgeon General (OTSG), Office of the Chief of Public Affairs (OCPA), and other interested offices for review and comment. The PDEIS is then returned to the preparer for revision as required and printing of the DEIS for filing.

(2) *DEIS.* The Army proponent will advise the DEIS preparer of the number of copies to be forwarded for final HQDA review (see (1) above for distribution list) and those for filing with EPA. Distribution may include interested Congressional delegations and committees, governors, national environmental organizations, the DOD and Federal agency headquarters, and other selected entities. The Army proponent will prepare the FR NOA, the proposed news release, and the EPA filing letter for signature of the DESOH. When the DEIS has been formally approved by the DESOH, the HQDA proponent will notify the preparer to distribute the DEIS to the remainder of the distribution list. The DEIS must be distributed prior to, or simultaneous to, filing with EPA. The list includes Federal, State, regional, and local agencies, private citizens, and local organizations. The EPA will publish the NOA in the FR. The 45 day comment period begins on the date of the EPA notice in the FR.

e. Public review of DEIS.

(1) The length of the DEIS public comment period will normally be no less than 45 days from publication of the NOA in the FR. If the statement is unusually long, circulate a summary with an attached list of locations where review of the entire DEIS may take place, (for example, local public libraries).

(2) However, EIS distribution must include the following:

(a) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(3) Hold public meetings or hearings on the DEIS in accordance

with the criteria established in 40 CFR 1506.6 (c) and (d) or for any other reason the proponent deems appropriate. News releases should be prepared and issued to publicize the meetings or hearings.

f. Response to comments. Incorporate responses to comments in the DEIS by modification of the text and/or written explanation. Where possible, group similar comments for a common response. The preparer or a higher authority may make individual response, if considered desirable.

g. Prepare Final Environmental Impact Statement (FEIS). If the changes in the DEIS are exclusively factual corrections, prepare and circulate only an errata sheet containing DEIS comments, responses, and changes. Nevertheless, the entire document and new cover sheet will be filed with EPA (40 CFR 1503.4 (c)). If broader modifications are necessary, the proponent will prepare a preliminary FEIS incorporating these modifications. Processing the FEIS is essentially the same as the process outlined for the DEIS transmittal. The FEIS distribution must include any person, organization, or agency that submitted substantive comments on the EIS. Also, distribution to commenting agencies and the public must occur prior to, or simultaneously with, filing the NOA for the EIS with EPA. There is no need to invite public comment during the 30 day post-filing waiting period. (40 CFR 1503.1 (b))

h. Decision. Make no decision on a proposed action until 30 days after EPA has published the NOA of the FEIS in the FR, or 90 days after the NOA of the DEIS, whichever is later. EPA publishes NOAs weekly. Those NOAs ready for EPA by close of business Friday are published in the next Friday's issue of the FR.

i. Record of decision (ROD). When a decision is made, the decisionmaker will prepare a ROD (40 CFR 1505.2, and 1505.3) which will become a part of the environmental documentation presented for the final decision. Forward a copy of the signed ROD to the Army Environmental Office. The ROD will—

(1) State the decision.

(2) Identify all alternatives considered by the Army in reaching its decision, specifying the preferred alternatives as well as the environmental alternatives, if they are not the same. The Army may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions.

(3) Identify and discuss all such factors, including any essential considerations of national policy that were balanced by the Army in making its decision. Because economic and technical analyses are balanced with environmental analysis, the agency preferred alternative will not necessarily be the environmentally preferred alternative.

(4) State how those considerations entered into the final decision.

(5) State whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why they were not. A monitoring and enforcement program will be adopted and summarized for any mitigation. (See app F.)

j. Pre-decision referrals. 40 CFR 1504 specifies procedures to resolve Federal agency disagreements on the environmental effects of a proposed action. Pre-decision referrals apply to interagency disagreement on a proposed action's potential unsatisfactory effects.

k. Changes during preparation. If there are substantial changes in the proposed action, or significant new information relevant to environmental concerns during the proposed action's planning process, the proponent will prepare revisions or a supplement to any environmental document or prepare new documentation as necessary.

l. Mitigation. All measures planned to minimize or mitigate expected significant environmental impacts will be identified in the EIS. Implementation of the mitigation plan is the responsibility of the proponent (See app F.) The proponent will make available to the public, upon request, the status and results of mitigation measures associated with the proposed action.

m. Implementing the decision. The Army may provide for monitoring to assure that its decisions are carried out and should do so in controversial cases or environmentally sensitive areas. (See app F.) Mitigation and other conditions established in the EIS or

during its review, and comment as part of the decision, will be implemented by the lead agency or other appropriate consenting agency. The proponent will—

(1) Include appropriate conditions in grants, permits, or other approvals.

(2) Condition funding of actions on mitigation.

(3) Upon request, inform cooperating or commenting agencies on the progress in carrying out adopted mitigation measures that they have proposed and that were adopted by the agency making the decision.

(4) Upon request, make the results of relevant monitoring available to the public and Congress.

n. Supplemental EIS (SEIS). SEISs (40 CFR 1502.9 (c)) are processed in the same way as draft and final EISs. Scoping is not required for an SEIS.

6-6. Existing EISs

A newly proposed action must be the subject of a separate EIS. The proponent may extract and revise the existing environmental documents in such a way as to bring them completely up to date, in light of the new proposals. Such a revised EIS will be prepared and processed entirely under the provisions of this regulation. If an EIS of another agency is adopted, it must be processed in accordance with 40 CFR 1506.3.

6-7. Major Army Command (MACOM) processing of an EIS

In certain cases where the scope of the EIS is limited, the HQDA proponent may authorize a MACOM to process an EIS.

a. NOI. When the NOI is forwarded to the HQDA proponent (para 6-5 *a* (2)), the proponent may determine that the MACOM should accomplish EIS processing. The HQDA proponent will consult with the Army Environmental Office, who will gain approval from DESOH. Proponent will return the NOI with any comments

and a letter authorizing the MACOM to process the EIS in accordance with the guidance in this chapter. The MACOM is responsible for preparing the NOI, proposed news release, and a transmittal letter as described in figure 6-2, and for forwarding that material to the Army Environmental Office. After a review to ensure acceptability of the document, the OASA (I&L) will forward the NOI to the FR.

b. PDEIS. When the PDEIS is staffed at the unit Headquarters, copies will be provided for concurrent review to the following HQDA elements to ensure that HQDA interposes no objection: JALS-RL, OGC, OCPA, OCLL, DASG-PSP-E, the Army Environmental Office, and the HQDA proponent.

c. Filing the EIS. The unclassified portions of the DEIS and FEIS will be filed with the EPA Federal Activities Office by forwarding five copies with a transmittal letter as described in figure 6-4. An additional five copies will be sent to the applicable EPA regional office for its review of the proposed action. One copy will be forwarded to Office of the Secretary of Defense (OSD) (fig 6-5). Distribution of HQDA EIS copies will follow that of the PDEIS list. (See *b* above.) Copies will be coordinated for Congressional delegations and committees with the HQDA (OCLL) to meet Congressional notification procedures. Remaining distribution is for interested governors, Federal agency headquarters, national environmental organizations, regional, State and local agencies and organizations, and interested private citizens. The proponent is responsible for developing the distribution list; advice is available from the Army Environmental Office. A NOA may be published in the FR by forwarding the notice, a proposed news release, and a transmittal letter by the same method used for the NOI. (See *a* above.)

d. ROD. At the time of decision, a ROD will be prepared. (40 CFR 1505.2 and 1505.3.) A copy of the ROD will be provided to the Army Environmental Office.

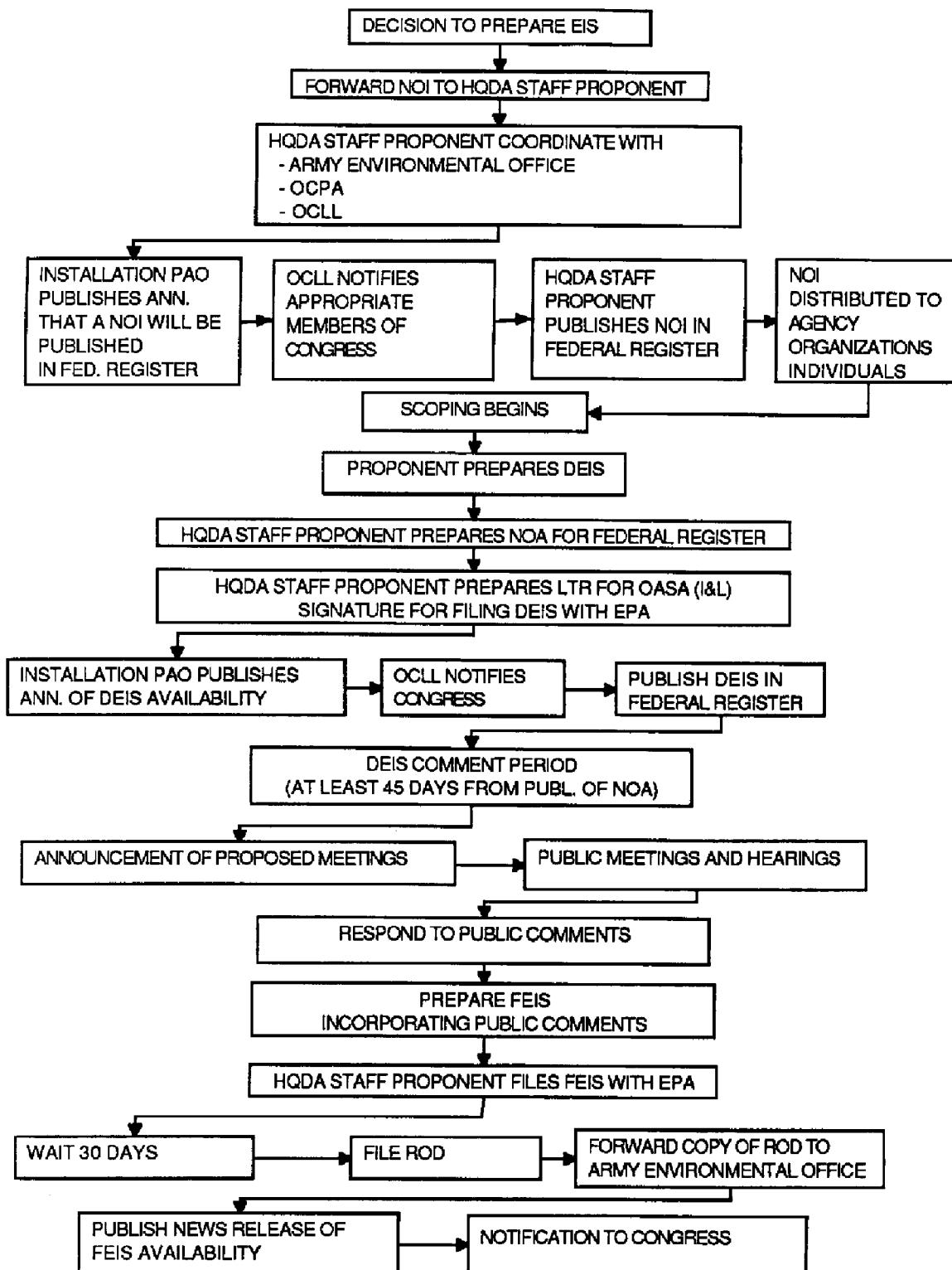


Figure 6-1. Steps in preparing and processing an environmental impact statement



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310

Director
Office of the Federal Register
National Archives and Records Service
1100 L Street, N. W.
Washington, D. C. 20408

Dear Sir:

The attached Notice of Intent is submitted for publication in the Notice section of the Federal Register.

Please publish this Notice of Intent in the earliest edition of the Federal Register. This notice is required for the Department of Army to perform its military mission and comply with the National Environmental Policy Act and the President's Council on Environmental Quality regulations.

Please bill this to charge code 3710-08-M.

Sincerely,

Lewis D. Walker
Deputy for Environment, Safety
and Occupational Health
OASA(I&L)

Enclosure

cc: Army Environmental Office
HQDA Staff Proponent

NOTES: 3 Originals must be signed
The Charge code 3710-08-M must appear in the
letter

Figure 6-2. Sample Notice of Intent (NOI) transmittal letter

**Department of Army
Notice of Intent**

To prepare a Draft Environmental Impact Statement (DEIS) for proposed barracks construction at Fort Jefferson, California.

Agency: DOD, U. S. Army, Fort Jefferson, California.

Summary: A series of three barracks are proposed for construction at Fort Jefferson, California, to provide adequate housing for bachelor enlisted personnel assigned to the installation. These facilities are proposed to replace existing substandard facilities for personnel who currently live in expensive rental units within the community or in inadequate quarters on the installation. The inadequate quarters are deficient in seismic design and do not meet DOD standards for privacy, space, or security. The requirements for these projects are not the result of new or expanded missions. The location of the proposed barracks is between M and N Streets on Wisconsin Avenue.

Alternatives:

- a. No Action.
- b. Rehabilitation of existing facilities.
- c. Alternate Site locations.

Scoping: Comments received as a result of this notice will be used to assist the Army in identifying potential impacts to the quality of the human environment. Individuals or organizations may participate in the scoping process by written comment or by attending a scoping meeting to be held on May 23, 1990, 8 P. M., at the Norwood Avenue High School, 123 Norwood Avenue, Port Jefferson, California. Written comments may be forwarded to: Commander, U. S. Army Engineer School, Attention: Director of Engineering and Housing, Fort Jefferson, California 91702-1000. Comments and suggestions should be received not later than 15 days following the public scoping meeting to be considered in the DEIS. Questions regarding this proposal may be directed to Ms. Jane McIntyre, (900) 555-9876.

**Lewis D. Walker
Deputy for Environment, Safety
and Occupational Health
OASA(I&L)**

Figure 6-3. Sample Notice of Intent (NOI)



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310

Director
Office of Federal Activities
U. S. Environmental Protection Agency
Room 2119, West Tower
Waterside Mall
Washington, D. C. 20460-0001

Dear Sir:

Enclosed are five copies of the Draft Environmental Impact Statement, Proposal to Construct Barracks at Fort Jefferson, California.

These copies are forwarded for filing in accordance with the President's Council on Environmental Quality regulations for implementing the provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508).

Sincerely,

Lewis D. Walker
Deputy for Environment, Safety
and Occupational Health
OASA(I&L)

Enclosure

NOTE: DEISs and the accompanying NOA reaching EPA by close of business Friday will be published in the Federal Register the following Friday. Failure to deliver documents to EPA by Friday close of business will result in an additional one week delay.

Figure 6-4. Sample letter of transmittal of draft Environmental Impact Statement (DEIS) to Environmental Protection Agency (EPA)



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE
(ENVIRONMENT)

SUBJECT: Availability of Draft Environmental Impact
Statement

In accordance with Department of Defense Directive
6050.1, Environmental Considerations in DOD Actions,
attached is one copy of the Draft Environmental Impact
Statement, Proposal to Construct Barracks at Fort
Jefferson, California.

Lewis D. Walker
Deputy for Environment, Safety
and Occupational Health
OASA(I&L)

Enclosure

Figure 6-5. Sample letter of transmittal of draft Environmental Impact Statement (DEIS) to Office of the Secretary of Defense (OSD)

Chapter 7 Public Involvement and the Scoping Process

7-1. Public involvement

a. The requirement (40 CFR 1506.6) for public involvement recognizes that all potentially affected parties will be involved, when practicable, whenever developing environmental documentation. This requirement can be met at the very beginning of the environmental analysis and documentation process by developing a plan to include all affected parties. (See also AR 360-5.) The plan will include the following:

(1) Information disseminated to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. Such information may be subject to Freedom of Information Act and operations security review.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, State, and Federal Government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above.

(4) Public affairs officers at all levels will be kept informed.

b. When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

c. Preparation of EAs will incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

d. Persons and agencies to be consulted include the following:
(1) Municipal, township, and county elected and appointed officials.

(2) State, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(3) Local and regional administrators of other Federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different Federal agencies whose effects must be considered with the proposed Army action, (for example, the U.S. General Services Administration (GSA)).

(4) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as, farmers and ranchers, homeowners, small business owners, and Indian tribes.

(5) Members and officials of those identifiable interest groups of

local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(6) Any person or group that has specifically requested involvement in the specific action or similar actions.

e. The public involvement processes and procedures by which participation may be solicited include the following:

(1) The direct individual contact process identifies persons expected to express an opinion and participate in later public meetings. Direct contact may also identify the preliminary positions of such persons on the scope of issues that the EIS will address. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of very limited scope.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(4) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

f. The meetings described in *e* above should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent of *a* above.

g. Public surveys or polls to identify public opinion of a proposed action will be performed. (AR 335–15, chap 10).

7-2. Scoping process

a. Introduction. The scoping process, required for EIS preparation, (40 CFR 1501.7), should aid the proponent in determining the scope and significant issues related to the proposed action. The process requires appropriate public participation immediately following publishing the NOI in the FR. The Army policy is that EISs for legislative proposals significantly affecting the environment will go through scoping unless extenuating circumstances make it impractical.

b. Scoping procedures. Scoping procedures fall into preliminary, public interaction, and final phases. These phases are discussed in paragraphs 7-3, 7-4, and 7-5, respectively.

7-3. Preliminary phase

In the preliminary phase, the proponent agency or office identifies as early as possible, how it will accomplish scoping and with whose involvement. Key points will be identified or briefly summarized as appropriate in the NOIs. The proponent will—

a. In the NOI, identify the significant issues to be analyzed in the EIS.

b. In the NOI, identify the office or person responsible for matters related to the scoping process. If they are not the same as the proponent of the action, make that distinction.

c. Identify the lead and cooperating agency, if already determined. (40 CFR 1501.5–6.)

d. Identify the method by which the agency will invite participation of affected parties; and identify a tentative list of the affected parties to be notified.

e. Identify the proposed method for accomplishing the scoping procedure.

f. Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decision-making schedule including—

(1) The scoping process itself.

(2) Collecting or analyzing environmental data, including studies required of cooperating agencies.

(3) Preparation of DEISs and FEISs.

(4) Filing of the ROD.

(5) Taking the action.

(6) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions that will involve separate environmental analysis.

g. If applicable, in the NOI, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this regulation, including scoping.

7-4. Public interaction phase

a. During this portion of the process, the proponent will invite comments from all affected parties and respondents to the NOI to assist in developing issues for detailed discussion in the EIS. Assistance in identifying possible participants is available from the Army Environmental Office.

b. In addition to the affected parties identified above, participants should include the following:

(1) Technical representatives of the proponent. Such persons must be able to describe the technical aspects of the proposed action and alternatives to other participants.

(2) One or more representatives of any Army-contracted consulting firm, if one has been retained to participate in writing the EIS or providing reports that the Army will directly use to create substantial portions of the EIS.

(3) Experts in various environmental disciplines, if any area where impacts are foreseen is not already represented among the other scoping participants.

c. In all cases, provide the participants with information developed during the preliminary phase and with as much of the following information that may be available:

(1) A brief description of the environment at the affected location. When descriptions for a specific location are not available, use general descriptions of the probable environmental effect. Also include the extent to which the environment has been modified or affected in the past.

(2) A description of the proposed alternatives. The description will be sufficiently detailed to enable evaluation of the range of impacts that may be caused by the proposed action and alternatives. The amount of detail that is sufficient will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be familiar.

(3) A tentative identification of “any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration” (40 CFR 1501.7(*a*)(5)).

(4) Any additional scoping issues or limitations on the EIS, if not already described during the preliminary phase.

d. The public involvement may begin with the NOI to publish an EIS. The NOI may indicate when and where a scoping meeting will take place and whom to contact to receive preliminary information. The purpose of the scoping meeting is to be an informal public meeting. It is a working session where the gathering and evaluation of information relating to potential environmental impacts can proceed.

e. Starting with the above information, the person conducting the scoping process will use input from any of the involved or affected parties. This will aid in developing the conclusions. The proponent determines the final scope of the EIS. If the proponent chooses not to require detailed treatment of significant issues or factors in the EIS, in spite of relevant technical or scientific objections by any participant to the contrary, the proponent will clearly identify (in the environmental consequences section of the EIS) the criteria that were used to eliminate such factors from detailed consideration.

7-5. The final phase

a. The scope used in the preparation of DEIS consists of the determinations made by the proponent during and after the public interaction phase of the process, as follows:

(1) The scope and the significant issues for detailed analysis in the EIS (40 CFR 1501.7(*a*)(2)). To determine the scope of EISs, the proponent will consider three types of actions, alternatives, and impacts.

(2) The three actions (other than unconnected single actions) are as follows:

(a) Connected actions, that are closely related and should be discussed in the same impact statement. Actions are connected if they automatically trigger other actions that may require EISs, cannot or will not proceed unless other actions are taken previously or simultaneously, are interdependent parts of a larger action, and depend on the larger action for their justification.

(b) Cumulative actions, when viewed with other proposed actions, have cumulatively significant impacts and should be discussed in the same impact statement.

(c) Similar actions, that have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography, may be analyzed in the EIS. Agencies should do so when the best way to assess such actions is to treat them in a single EIS.

(3) The three alternatives are as follows:

(a) No action.

(b) Other reasonable courses of action.

(c) Mitigation measures (not in the proposed action).

(4) The three types of impacts are as follows:

(a) Direct.

(b) Indirect.

(c) Cumulative.

(5) Identification and elimination from detailed study of issues that are not significant or have been covered by prior environmental review. This narrows the discussion of these issues to a brief presentation of why they will not have a significant effect on the human environment. It may also provide a reference to their coverage elsewhere. (40 CFR 1501.7(a)(3)).

(6) Allocation of assignments for preparation of the EIS among the lead and any cooperating agencies, with the lead agency retaining responsibility for the statement. (40 CFR 1501.7(a)(4)).

(7) Indication of any public EAs and other EISs, prepared by the Army or another Federal agency, related to, but not part of, the EIS under consideration. (40 CFR 1501.7(a)(5)).

(8) Identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with the EIS. (40 CFR 1501.7(a)(6)).

b. As part of the scoping process the lead agency may—

(1) Set time limits, as provided in paragraph 2–6 b , if they were not already indicated in the preliminary phase.

(2) Prescribe overall page limits to the EIS in accordance with the CEQ regulations that emphasize conciseness.

c. All determinations reached by the proponent during the scoping process will be clearly conveyed to the preparers of the EIS in a Scope of Statement. The Scope of Statement will be made available to participants in the scoping process and to other interested parties on request. Any conflicts on issues of a scientific or technical nature that arise between the proponent and scoping participants, cooperating agencies, other Federal agencies, or preparers of the document will be identified during the scoping process and resolved or discussed by the proponent in the DEIS.

7–6. Aids to information gathering

The proponent may use or develop graphic or other innovative methods to aid information gathering, presentation, and transfer during the three scoping phases. These include methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and organizing its own determinations on scope for use during preparation of the DEIS.

7–7. Modifications of the scoping process

a. If a lengthy period exists between a decision to prepare an EIS and the time of preparation, the proponent will initiate the NOI at a reasonable time in advance of preparation of the DEIS. the NOI will state any tentative conclusions regarding the scope of the EIS made

prior to publication of the NOI. Reasonable time for public participation will be allowed before the proponent makes any final decisions or commitments on the EIS.

b. The proponent of a proposed action may use scoping during preparation of environmental review documents other than EIS, if desired. The proponent may use the above procedures or may develop modified procedures at his or her discretion.

Chapter 8 Environmental Effects of Major Army Actions Abroad

8–1. Introduction

Protection of the environment is an Army priority, no matter where the installation is located. The Army is committed to pursuing an active role in addressing environmental quality issues in our relations with neighboring communities and assuring that consideration of the environment is an integral part of all decisions. This chapter assigns responsibilities for review of environmental effects abroad of major Army actions. It is a requirement of Executive Order 12114, “Environmental Effects Abroad of Major Federal Actions,” dated 4 January 1979. This chapter applies to HQDA and Army agencies’ actions that would significantly affect the quality of the human environment outside the United States.

8–2. Global commons

Environmental effects of actions that affect the global commons require environmental analyses and documentation. (See encls 1 and 2 of DOD Directive 6050.7) (apps G and H.) These relate to environmental effects abroad of major military actions.

8–3. Army policy in global commons and foreign nations

a. *Act with care in the global commons.* All the nations of the world share the stewardship of these areas. Take account of environmental considerations when acting in the global commons in accordance with the procedures set out in appendix G.

b. *Act with care within the jurisdiction of a foreign nation.* Respect treaty obligations and the sovereignty of other nations. Exercise restraint in applying U.S. laws within foreign nations unless Congress has expressly provided otherwise. Evaluate environmental considerations in accordance with appendix H when the proposed action could affect the environment of a foreign nation.

c. *Coordinate with the Department of State on formal communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments.* Consult with the Department of State regarding use of additional exemptions from this directive as specified in appendix H. Coordinate and consult with the Department of State through the Assistant Secretary of Defense (International Security Affairs) (ASD (ISA)).

8–4. Responsibilities

a. Army agencies that control actions abroad (as defined within the limitations of Status of Forces Agreements) will—

(1) Ensure that regulations and other major policy issuances receive a review by the Army Environmental Office for consistency with Executive Order 12114, DOD Directive 6050.7, and this regulation.

(2) Consult with HQDA (DAMO–SSM) on significant or sensitive actions or decisions affecting relations with other nations.

(3) Prepare and consider environmental documents for proposed actions required by this regulation.

(4) Ensure that regulations and other policies which affect global commons are subject to review for consistency with this regulation.

(5) Designate a single POC for matters regarding this regulation.

b. The Assistant Secretary of the Army, Installation and Logistics (ASA (I&L)) will—

(1) Serve as the Secretary of the Army’s responsible official for environmental matters abroad.

(2) Maintain liaison with the Assistant Secretary of Defense for

Production and Logistics (ASD (P&L)) on matters concerning EO 12114, DOD Directive 6050.7, and this regulation.

(3) Coordinate actions with other Secretariat offices as appropriate.

c. The Chief of Engineers will—

(1) Serve as ARSTAF proponent for implementation of EO 12114, DOD Directive 6050.7, and this regulation.

(2) Apply in planning and executing overseas construction activities where appropriate in light of applicable statutes and SOFAs.

d. Deputy Chief of Staff for Operations and Plans (DCSOPS) will—

(1) Serve as the focal point on the ARSTAF for integrating environmental considerations required by Executive Order 12114 into Army plans and activities. Emphasis is on those reasonably expected to have widespread, long-term, and severe impacts on the global commons or the territories of foreign nations.

(2) Consult with the Office of Foreign Military Rights Affairs of Assistant Secretary of Defense (International Security Affairs) (ASD (ISA)) on significant or sensitive actions affecting relations with another nation.

e. The Judge Advocate General (TJAG), in coordination with the Office of the General Counsel, will provide advice and assistance concerning the requirements of EO 12114 and DOD Directive 6050.7.

f. The Chief of Public Affairs (CPA) will provide advice and assistance on public affairs as necessary.

8-5. Implementation guidance

a. Environmental documents prepared under the provisions of this chapter should use the format for such documents found in appendixes G and H. Otherwise, use a format appropriate in light of the applicable statutes and SOFAs.

b. Submit nominations for inclusions in the list of CX through DAMO-SSM to the Army Environmental Office.

Appendix A

List of Categorical Exclusions (CX)

Section I

List of categorical exclusions (CX)

A-1. Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

A-2. Law and order activities performed by military police and physical plant protection and security personnel, excluding formulation and/or enforcement of hunting and fishing policies or regulations that differ substantively from those in effect on surrounding non-Army lands.

A-3. Recreation and welfare activities not involving off-road recreational vehicle management.

A-4. Commissary and Post Exchange (PX) operations, except where hazardous material is stored or disposed.

A-5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities, to include the layaway of facilities, except when requiring application or disposal of hazardous or contaminated materials.

A-6. Routine procurement of goods and services, including routine utility services.

A-7. Construction that does not significantly alter land use, provided the operation of the project when completed would not of itself have a significant environmental impact; this includes grants to private lessees for similar construction. (REC required.)

A-8. Simulated war games and other tactical and logistical exercises without troops.

A-9. Training entirely of an administrative or classroom nature.

A-10. Storage of materials, other than ammunition, explosives, pyrotechnics, nuclear, and other hazardous or toxic materials.

A-11. Operations conducted by established laboratories within enclosed facilities where—

a. All airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid bulk waste disposal practices are in compliance with existing Federal, State, local laws, and regulations.

b. No animals that must be captured from the wild are used as research subjects, excluding reintroduction projects. (REC required.)

A-12. Developmental and operational testing on a military installation, where the tests are conducted in conjunction with normal military training or maintenance activities so that the tests produce only incremental impacts, if any and provided that the training and maintenance activities have been adequately assessed, where required, in other Army environmental documents. (REC required.)

A-13. Routine movement of personnel; routine handling and distribution of nonhazardous and hazardous materials in conformance with DA, EPA, Department of Transportation, and State regulations.

A-14. Reduction and realignment of civilian and/or military personnel that fall below the thresholds for reportable actions as prescribed by statute or AR 5-10. (REC required.)

A-15. Conversion of commercial activities (CA) to contract performance of services from in-house performance under the provisions of DOD Directive 4100.15.

A-16. Preparation of regulations, procedures, manuals, and other guidance documents that implement, without substantive change, the applicable HQDA or other federal agency regulations, procedures, manuals, and other guidance documents that have been environmentally evaluated.

A-17. Acquisition, installation, and operation of utility and communication systems, data processing, cable, and similar electronic equipment that use existing rights of way, easements, distribution systems, and facilities.

A-18. Activities that identify or grant permits to identify, the state of the existing environment (for example, inspections, surveys, and investigations) without alteration of that environment or capture of wild animals.

A-19. Deployment of military units on a temporary duty (TDY) basis where existing facilities are used and the activities to be

performed have no significant impact on the environment. (REC required.)

A-20. Grants of easements for the use of existing rights-of-way for use by vehicles; electrical, telephone, and other transmission and communication lines; transmitter and relay facilities; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for similar public utility and transportation uses. (REC required.)

A-21. Grants of leases, licenses, and permits to use existing Army controlled property for non-Army activities, provided there is an existing land-use plan that has been environmentally assessed and the activity will be consistent with that plan. (REC required.)

A-22. Grants of consent agreements to use a Government-owned easement in a manner consistent with existing Army use of the easement; disposal of excess easement areas to the underlying fee owner. (REC required.)

A-23. Grants of licenses for the operation of telephone, gas, water, electricity, community television antenna, and other distribution systems normally considered as public utilities. (REC required.)

A-24. Transfer of real property administrative control within the Army, to another military department, or other Federal agency, including the return of public domain lands to the Department of Interior and reporting of property available for outgranting; and grants of leases, licenses, permits, and easements for use of excess or surplus property without significant changes in land use. (REC required.)

A-25. Disposal of uncontaminated buildings and other improvements for removal off-site. (REC required.)

A-26. Studies that involve no commitment of resources other than manpower. (REC required.)

A-27. Study and test activities within the procurement program for Military Adaptation of Commercial Items for items manufactured in the U.S. (REC required.)

A-28. Development of table organization and equipment documents, no fixed location or site.

A-29. Grants of leases, licenses, and permits to use DA property for or by another governmental entity when such permission is predicated upon compliance with the NEPA. (REC required.)

Section II

Screening criteria

A-30. A CX is a category of actions that do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required.

A-31. A CX may be used only when the criteria of paragraphs 4-1 and 4-2 have been applied and each of the following are true:

a. This action is not a major federal action significantly affecting the quality of the human environment.

b. There are minimal or no individual or cumulative effects on the environment as a result of this action.

c. There is no environmentally controversial change to existing environmental conditions.

d. There are no extraordinary conditions associated with this project.

e. This project does not involve the use of unproven technology.

f. This project involves no greater scope or size than is normal for this category of action.

g. There is no potential of an already poor environment being further degraded.

h. This action does not degrade an environment that remains close to its natural condition.

i. There are no threatened or endangered species (or critical habitat), significant archaeological resources, National Registered or National Register eligible historical sites, or other statutorily protected resources.

j. This action will not adversely affect prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, aquifers,

floodplains, wild and scenic rivers, or other areas of critical environmental concern.

Appendix B References

Section I Required Publications

AR 360-5
Army Public Affairs, Public Information. (Cited in para 7-1.)

Section II Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand the regulation.

AR 5-10
Reduction and Realignment Actions.

AR 11-27
Army Energy Program.

AR 95-50
Airspace and Special Military Operation Requirements.

AR 140-475
Real Estate Selection and Acquisition: Procedures and Criteria.

AR 200-1
Environmental Protection and Enhancement.

AR 210-10
Administration.

AR 210-20
Master Planning for Army Installations.

AR 335-15
Management Information Control System.

AR 380-5
Department of the Army Information Security Program.

AR 385-10
Army Safety Program.

AR 420-40
Historic Preservation.

AR 530-1
Operations Security (OPSEC).

DODD 4100.15
Commercial Activities Program.

DODD 6050.1
Environmental Effects in the United States of Department of Defense Actions.

DODD 6050.7
Environmental Effects Abroad of Major Department of Defense Actions.

Section III Referenced Forms

DD Form 1391
Military Construction Project Data.

Appendix C National Environmental Policy Act

THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED*

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

SEC. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

*Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, and Pub. L. 94-83, August 9, 1975.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

SEC. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) Identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations;

(C) Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- (i) The environmental impact of the proposed action,
- (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) Alternatives to the proposed action,
- (iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (c) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) Recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) Make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) Initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) Assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. Nothing in section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dry-land, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to

the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

Sec. 204. It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) Consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) Utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

Sec. 207. The Council may accept reimbursements from any private non-profit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the sup-

port of international exchange programs in the United States and in foreign countries.

Sec. 209. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

Appendix D Contents of the Environmental Impact Statement (EIS)

D-1. Cover sheet

The cover sheet will not exceed one page (40 CFR 1502.11) and will include—

a. A cover sheet preceded by a protective cover sheet that contains the following statement: “ The material contained in the attached (final or draft) Environmental Impact Statement is for internal coordination use only and may not be released to non-Department of Defense Agencies or individuals until coordination has been completed and the material has been cleared for public release by appropriate authority. ” This sheet will be removed prior to filing the document with EPA.

b. A list of responsible agencies including the lead agency and any cooperating agency.

c. The title of the proposed action that is the subject of the statement and, if appropriate, the titles of related cooperating agency actions, together with State and county (or other jurisdiction as applicable) where the action is located.

d. The name, address, and telephone number of the person at the agency who can supply further information, and, as appropriate, the name and title of the major approval authority in the command channel through HQDA staff proponent.

e. A designation of the statement as a draft, final, or draft or final supplement.

f. A one-paragraph abstract of the statement that should describe only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

g. The date by which comments must be received, computed in cooperation with the EPA. (See example cover sheet, fig D-1.)

D-2. Summary

The summary will stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. It should list all Federal permits, licenses, and other entitlements that must be obtained prior to proposal implementation. Further, a statement of compliance with the requirements of other Federal environmental protection laws will be included (40 CFR 1502.25).

In order to simplify consideration of complex relationships, every effort will be made to present the summary of alternatives and their impacts in a graphic format with the narrative. This summary should not exceed 10 pages.

D-3. Table of contents

This section will provide for the table of contents, list of figures and tables, and a list of all referenced documents, including a bibliography of references within the body of the EIS. The table of contents should have enough detail so that searching for sections of text is not difficult.

D-4. The purpose of and need for the action

This section should clearly state the nature of the problem and discuss how the proposed action or range of alternatives would solve the problem. This section is designed specifically to call attention to the benefits of the proposed action. If a cost-benefit analysis has been prepared for the proposed action, it may be included here, or attached as an appendix and referenced here. This section will briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives.

D-5. Alternatives considered

This section presents all reasonable alternatives and their environmental impacts. An examination of each specific proposal in clear terms is required. This section should be written in simple, nontechnical language for the lay reader. A no action alternative will be included (40 CFR 1502.14(d)). For actions other than construction,

the term no action is often misleading because a continuation of the status quo is implicit. This section needs an examination of the status quo. A preferred alternative need not be identified in the DEIS; however, a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)).

A simple title or a letter or numerical symbol may be used for each of the discussed alternatives (for example, alternative A). Reference to the title or designation will be continued uniformly throughout the document in the appropriate sections.

The environmental impacts of the alternatives will be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided the decisionmaker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of tabular or matrix format is encouraged to provide the reviewer with an at-a-glance review. In sum, the following points are required:

a. A description of all reasonable alternatives including the preferred action, alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the no action alternative.

b. A comparative presentation of the environmental consequences of all reasonable alternative actions including the preferred alternative.

c. A description of the mitigation measures nominated for incorporation into the proposed action and alternatives, as well as mitigation measures that are available but not incorporated.

d. Listing of any alternatives that were eliminated from detailed study. A brief discussion of the reasons for which each alternative was eliminated.

D-6. Affected environment

This section will contain information about existing conditions in the affected areas necessary to understand the potential effects of the alternatives under consideration (40 CFR 1502.15). Environments created by the implemented proposal will be included as appropriate. Affected elements could include, for example, biophysical characteristics (ecology and water quality); land use and land use plans; architectural, historical, and cultural amenities; utilities and services; and transportation. This section will not be encyclopedic. It will be written clearly and the degree of detail for points covered will be related to the significance and magnitude of expected impacts. Elements not impacted by any of the alternatives need only be presented in summary form or referenced.

D-7. Environmental and socioeconomic consequences

This section of the EIS forms the scientific and analytic basis for the summary comparison of effects discussed in D-5. The following will be discussed (40 CFR 1502.16):

a. *Direct effects and their significance.* Include in the discussion the direct impacts on human health and welfare and on other forms of life and related ecosystems. Examples of direct effect might include noise from military helicopter operations or the benefits derived from the installation of wet scrubbers to meet air quality control standards.

b. *Indirect effects and their significance.* Include here socioeconomic impacts. Many Federal actions attract people to previously unpopulated areas and indirectly induce pollution, traffic congestion, and haphazard land development. Conversely, other actions may disperse the existing population. Aircraft noise often affects future development patterns, and air pollution abatement operations may result in secondary water pollution problems.

c. *Possible conflicts between the proposed actions and Federal, regional, State, and local (including Indian tribe) land and airspace use plans, policies, and controls for the area concerned.* Compare the land use aspects of the proposed action and discuss possible conflicts, such as *siting* an extremely noisy activity adjacent to a residential area, leasing land for purposes inconsistent with State

wildlife management, or creating conflicts with prime and unique farmland policies.

d. The environmental effects of alternatives, including the proposed action.

(1) Impacts of the alternatives, including a worst case analysis where there are gaps in relevant information or scientific uncertainty.

(2) Adverse environmental effects that cannot be avoided should the proposal be implemented. Include the relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity. The section should discuss the extent to which the proposed action and its alternatives involve short-term vs. long-term environmental gains and losses. In this context, short-term and long-term do not refer to any rigid time period and should be viewed in terms of the environmentally significant consequences of the proposed action. Thus, short-term can range from a very short period of time during which an action takes place to the expected life of a facility.

e. Energy requirements and conservation potential of various alternatives and mitigation measures. Consult the Energy Resource Impact Statement (AR 11-27), when applicable, to satisfy this requirement. Account for the energy consumption of each proposed alternative and associated economics. Discuss, where appropriate, the uses of renewable and nonrenewable energy resources. Conservation techniques that could attenuate energy consumption should also be discussed within this section; for example, the use of insulation for newly constructed family housing that would reduce the long-term consumption of fuel oil or natural gas.

f. Natural or depletable resource requirements and conservation potential of various mitigation measures. Include discussion of any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented. The term resources should include—

(1) *Materials.* Discuss materials in short supply such as metals and wood, but do not include materials that are plentiful or have competitive alternatives (for example, aggregate or fill materials).

(2) *Natural.* Discuss the use of natural resources resulting in irrevocable effects such as ecosystem imbalance, destruction of wildlife, loss of prime and unique farmlands. Specifically include consumption of natural energy resources in short supply, such as oil or natural gas.

(3) *Cultural.* Discuss destruction of human interest sites, archaeological and historical, scenic views or vistas, or valued open space. Reiterate lasting socioeconomic effects the proposed action might have on the surrounding community.

g. Urban quality, historic and cultural resources, and the design of the built environment, including reuse and conservation potential of various alternatives and mitigation measures. Discuss the effects on adjacent neighborhoods and the city at large. Examine the effects on physical design features (also known as the built environment) and resultant impacts on social interaction areas such as privacy,

public opinion, personnel perceptions, and other aspects of the social environment. Review the reuse potential of existing building space and its time-use allocation, usually referred to as time and spatial management. (Time and spatial management allows for conservation of energy and other resources by discouraging new construction and operation until all existing building and time allocations have been fully scrutinized for alternate reuse.)

h. Means to mitigate adverse environmental effects. Include mitigation not already included as part of the various alternatives. Also, specify mitigations that require action by other agencies or outside parties.

D-8. List of preparers

The EIS will list the names of its preparers, together with their qualifications (expertise, experience, and professional disciplines). (40 CFT 1502.17). Include those people who were primarily responsible for preparing (research, data collection, and writing) the EIS or significant background or support papers, and basic components of the statement. When possible, the people who are responsible for a particular analysis, as well as an analysis of background papers, will be identified. If some or all of the preparers are contractors' employees, they may be identified as such. Identification of the firm that prepared the EIS is not, by itself, adequate to meet the requirements of this point. Normally, the list will not exceed two pages.

D-9. Distribution list

For the DEIS, a list will be prepared indicating from who review and comment is requested. The list will include public agencies and private parties or organizations. The FEIS will normally only list those who have commented or shown an interest in the proposed action.

D-10. Index

The index will be an alphabetical list of topics in the EIS, especially of the types of effects induced by the various alternative actions. Reference may be made to either page number or paragraph number.

D-11. Appendixes

If an agency prepares an appendix to an EIS, the appendix will—

a. Consist of material prepared in connection with an EIS (as distinct from material that is not so prepared and incorporated by reference).

b. Consist only of material that substantiates any analysis fundamental to an impact statement.

c. Be analytic and relevant to the decision to be made.

d. Be circulated with the EIS or readily available upon request.

LEAD AGENCY: Department of the Army, TRADOC.

COOPERATING AGENCY(IES): (if any) U.S. Forest Service, U.S. Department of Agriculture.

TITLE OF THE PROPOSED ACTION: Development of training area, Fort Pleasant, Maryland.

AFFECTED JURISDICTION: State of Maryland; Smith, Taylor, and Jones Counties.

PREPARER/PROPONENT APPROVED (OR REVIEWED BY): Name, address and telephone number, name and title of proponent. (i.e., Installation Commander or program manager).

REVIEWED BY: Name and title of the environment coordinator.

APPROVED BY: Name and title of any intermediate proponent (i.e. MACOM commander); Name and title of Army Staff proponent (i.e., Director of program affected by EIS).

ABSTRACT: One paragraph summary.

REVIEW COMMENT DEADLINE: (Computed in cooperation with EPA guidance).

Figure D-1. Example cover sheet

Council on Environmental Quality
Executive Office of the President

REGULATIONS
For Implementing The Procedural Provisions Of The
**NATIONAL
ENVIRONMENTAL
POLICY ACT**



Reprint
40 CFR Parts 1500–1508
(as of July 1, 1986)

Figure 1.

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PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.

- 1500.1 Purpose.
- 1500.2 Policy.
- 1500.3 Mandate.
- 1500.4 Reducing paperwork.
- 1500.5 Reducing delay.
- 1500.6 Agency authority.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.

§ 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions

that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

§ 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

§ 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions

of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant

effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (§ 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(i) Combining environmental documents with other documents (§ 1506.4).

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt

from requirements to prepare an environmental impact statement.

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501—NEPA AND AGENCY PLANNING

Sec.

1501.1 Purpose.

1501.2 Apply NEPA early in the process.

1501.3 When to prepare an environmental assessment.

1501.4 Whether to prepare an environmental impact statement.

1501.5 Lead agencies.

1501.6 Cooperating agencies.

1501.7 Scoping.

1501.8 Time limits.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

§ 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available

to the affected public as specified in § 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may re-

quest the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

§ 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and

before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the FEDERAL REGISTER except as provided in § 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§ 1502.7).

(2) Set time limits (§ 1501.8).

(3) Adopt procedures under § 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

§ 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: *Provided*, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.

1502.1 Purpose.

1502.2 Implementation.

1502.3 Statutory requirements for statements.

1502.4 Major Federal actions requiring the preparation of environmental impact statements.

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- Sec.
1502.23 Cost-benefit analysis.
1502.24 Methodology and scientific accuracy.
1502.25 Environmental review and consultation requirements.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

§ 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

§ 1502.2 Implementation.

To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report.

On proposals (§ 1508.23).

For legislation and (§ 1508.17).

Other major Federal actions (§ 1508.18).

Significantly (§ 1508.27).

Affecting (§§ 1508.3, 1508.8).

The quality of the human environment (§ 1508.14).

§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall

be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

§ 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can

serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7).

§ 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

§ 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in § 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

§ 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 1502.11 through 1502.18, in any appropriate format.

§ 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental im-

pacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate

the discussions of those elements required by sections 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1502.17 List of preparers.

The environmental impact statement shall list the names, together

with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§ 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

§ 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in § 1502.18(d) and unchanged statements as provided in § 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person,

organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

§ 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

§ 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the *FEDERAL REGISTER* on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the re-

quirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

§ 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered

Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503—COMMENTING

Sec.

1503.1 Inviting comments.

1503.2 Duty to comment.

1503.3 Specificity of comments.

1503.4 Response to comments.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

§ 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing

State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10.

§ 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in § 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§ 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of neces-

sary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 1502.19). The entire document with

a new cover sheet shall be filed as the final statement (§ 1506.9).

PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.

1504.1 Purpose.

1504.2 Criteria for referral.

1504.3 Procedure for referrals and response.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55998, Nov. 29, 1978, unless otherwise noted.

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after con-

certed, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

§ 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the

referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response

(unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f) (2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

[43 FR 55998, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

PART 1505—NEPA AND AGENCY DECISIONMAKING

Sec.

1505.1 Agency decisionmaking procedures.

1505.2 Record of decision in cases requiring environmental impact statements.

1505.3 Implementing the decision.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C.

7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55999, Nov. 29, 1978, unless otherwise noted.

§ 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (§ 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

§ 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by

OMB Circular A-95 (Revised), part I, sections 6 (c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

§ 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.

- 1506.1 Limitations on actions during NEPA process.
- 1506.2 Elimination of duplication with State and local procedures.
- 1506.3 Adoption.
- 1506.4 Combining documents.
- 1506.5 Agency responsibility.
- 1506.6 Public involvement.
- 1506.7 Further guidance.
- 1506.8 Proposals for legislation.
- 1506.9 Filing requirements.
- 1506.10 Timing of agency action.
- 1506.11 Emergencies.
- 1506.12 Effective date.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

§ 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

- (1) Have an adverse environmental impact; or
- (2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

- (1) Is justified independently of the program;
- (2) Is itself accompanied by an adequate environmental impact statement; and
- (3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

§ 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

- (1) Joint planning processes.
- (2) Joint environmental research and studies.
- (3) Joint public hearings (except where otherwise provided by statute).
- (4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In

such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

§ 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

§ 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

§ 1506.5 Agency responsibility.

(a) *Information.* If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§ 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) *Environmental assessments.* If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) *Environmental impact statements.* Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the out-

come of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

§ 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the **FEDERAL REGISTER** and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the *102 Monitor*. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

§ 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

- (1) Research activities;
- (2) Meetings and conferences related to NEPA; and
- (3) Successful and innovative procedures used by agencies to implement NEPA.

§ 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§ 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; *Provided*, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative

proposal shall be prepared and circulated as provided by §§ 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, D.C. 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10.

§ 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the **FEDERAL REGISTER** each week of the environmental impact statements filed

during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rule-making under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45

days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see § 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

§ 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§ 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under sec. 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these

regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the FEDERAL REGISTER of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507—AGENCY COMPLIANCE

Sec.

1507.1 Compliance.

1507.2 Agency capability to comply.

1507.3 Agency procedures.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

§ 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by § 1507.3 to the requirements of other applicable laws.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a

person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

§ 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the FEDERAL REGISTER, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the FEDERAL REGISTER for comment. Agencies with similar programs should consult with each other

and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applica-

ble to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in § 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by § 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508—TERMINOLOGY AND INDEX

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AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

§ 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

§ 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

§ 1508.3 Affecting.

"Affecting" means will or may have an effect on.

§ 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

§ 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining

whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

"Environmental document" includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

§ 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it

(§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

§ 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

§ 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§ 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§ 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to

Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§ 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

§ 1508.20 Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

§ 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

§ 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

§ 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

§ 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

§ 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts

and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

§ 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

§ 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency

believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that

has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

§ 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

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THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED*

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

PURPOSE

Sec. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
- (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

*Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, and Pub. L. 94-83, August 9, 1975.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) Identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations;

(C) Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

- (i) The environmental impact of the proposed action,
- (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) Alternatives to the proposed action,
- (iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (c) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) Recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) Make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) Initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) Assist the Council on Environmental Quality established by title II of this Act.

SEC. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

SEC. 104. Nothing in section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

SEC. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

SEC. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

SEC. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to

the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

SEC. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

SEC. 204. It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

SEC. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) Consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) Utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

SEC. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

SEC. 207. The Council may accept reimbursements from any private non-profit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

SEC. 208. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the sup-

port of international exchange programs in the United States and in foreign countries.

SEC. 209. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

THE ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970*

TITLE II—ENVIRONMENTAL QUALITY (OF THE WATER QUALITY IMPROVEMENT ACT OF 1974)

SHORT TITLE

SEC. 201. This title may be cited as the "Environmental Quality Improvement Act of 1970."

FINDINGS, DECLARATIONS, AND PURPOSES

SEC. 202. (a) The Congress finds—

- (1) That man has caused changes in the environment;
- (2) That many of these changes may affect the relationship between man and his environment; and
- (3) That population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b)(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local governments.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this title are—

- (1) To assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing law; and
- (2) To authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality established by Public Law 91-190.

OFFICE OF ENVIRONMENTAL QUALITY

SEC. 203. (a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this title referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Bureau of the Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions under this title and Public Law 91-190, except that he may employ no more than 10 specialists and other experts without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or

*Pub. L. 91-224, 42 U.S.C. 4371-4374, April 3, 1970.

expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5330 of title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by—

(1) Providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91-190;

(2) Assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

(3) Reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) Promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encourage the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) Assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) Assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established through the Federal Government;

(7) Collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to sections 3618 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5) in carrying out his functions.

REPORT

SEC. 204. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

AUTHORIZATION

SEC. 205. There are hereby authorized to be appropriated not to exceed \$500,000 for the fiscal year ending June 30, 1970, not to exceed \$750,000 for the fiscal year ending June 30, 1971, not to exceed \$1,250,000 for the fiscal year ending June 30, 1972, and not to exceed \$1,500,000 for the fiscal year ending June 30, 1973. These authorizations are in addition to those contained in Public Law 91-190.

Approved April 3, 1970.

THE CLEAN AIR ACT § 309*

§ 7609. Policy review

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

*July 14, 1955, c. 360, § 309, as added Dec. 31, 1970, Pub. L. 91-604 § 12(a), 42 U.S.C. § 7609 (1970).

PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

As amended by Executive Order 11991. (Secs. 2(g) and (3(h)). May 24, 1977*

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

Section 1. Policy. The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Sec. 2. Responsibilities of Federal agencies. Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

*The Preamble to Executive Order 11991 is as follows:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purpose and policy of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371 *et seq.*), and Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), it is hereby ordered as follows:

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

Sec. 3. Responsibilities of Council on Environmental Quality.
The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and

Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

Sec. 4. *Amendments of E.O. 11472.* Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget," the following: "the Director of the Office of Science and Technology,".

(4) By substituting for subsection (g) of section 101 the following:

"(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) shall assist the President in directing the affairs of the Cabinet Committee."

(5) by deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91-190)".

(7) By substituting for "(hereinafter referred to as the 'Committee')", in section 201, the following: "(hereinafter referred to as the 'Citizens' Committee')".

(8) By substituting for the term "the Committee", wherever it occurs, the following: "the Citizens' Committee".

Appendix F Implementing a Monitoring and Methodology Program¹

F-1. Mitigation

a. The 1978 CEQ regulations for implementing NEPA recognizes the following five means of mitigating an environmental impact:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the effect on the environment.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact by replacing or providing substitute resources or environments. (40 CFR 1508.20).

b. The intention of mitigation is to reduce the effects of the action on the environment. The five means of mitigation (see a, above) are discussed in (1) through (5) below.

(1) *Avoidance*. This method avoids environmental impact by not performing certain activities; for example, allowing tracked vehicles to cross only at designated improved stream crossings. This restriction would reduce the effects on a stream resulting from random access, such as increased turbidity caused by bank erosion and bottom disturbance caused by the tracks.

(2) *Limitation of action*. The extent of an impact can be reduced by limiting the degree or magnitude of the action; for example, changing the firing time or the number of rounds fired on artillery ranges to reduce the noise impact on nearby residents. In the example in a above, the number of authorized stream crossings would have been limited or minimized.

(3) *Restoration of the environment*. This method restores the environment to its previous condition or better. Movement of troops and vehicles across vegetated areas often destroys vegetation. This impact can be mitigated by either reseeding or replanting the areas with native plants after the exercise.

(4) *Preservation and maintenance operations*. This method designs the action so as to reduce adverse environmental effects. Examples include maintaining erosion control structures, using air pollution control devices, and encouraging car pools in order to reduce transportation effects such as air pollution, energy consumption, and traffic congestion.

(5) *Replacement*. This method replaces the resource or environment that will be impacted by the action. Replacement can occur in-kind or otherwise; for example, replace deer habitat in the project area with deer habitat in another area; or, replace fisheries habitat with deer habitat. This replacement can occur either on the site of impact or at another location. This type of mitigation is often used in water resources projects. For example, if an action were destroying some of the installation's best deer habitat, a potential mitigation would be developing another section of the installation into deer habitat. This is an example of an in-kind replacement at a different site.

F-2. Identification of mitigation techniques

a. *Introduction*. Identifying and evaluating mitigation techniques involves using experts familiar with the predicted environmental impacts. A single mitigation measure will often alleviate several different impacts.

b. *Sources of information*. Many potential sources of information exist concerning the mitigation of various environmental effects. The following sources of information are available on post:

(1) Aesthetics.

(a) Installation Landscape Architect.

(b) Corps District Landscape Architects.

(2) Air Quality.

- (a) Installation Environmental Specialist.
- (b) Installation Preventive Medicine Officer.
- (3) Airspace.
 - (a) Installation Air Traffic and Airspace.
 - (b) Officers Department of the Army Regional.
 - (c) Representative to the Federal Aviation Administration.
 - (d) Department of the Army Aeronautical Services.
 - (e) Office Military Airspace Management System (MAM) Installation Range Control Officer.
- (4) Earth Science.
 - (a) Installation Environmental Specialist.
 - (b) Corp District Geotechnical Staff.
- (5) Ecology.
 - (a) Installation Environmental Specialist.
 - (b) Installation Wildlife Officer.
 - (c) Installation Forester.
 - (d) Installation Natural Resource Committee.
 - (e) Corps District Environmental Staff.
- (6) Energy and Resource Conservation. Installation Environmental Specialist.
 - (a) Installation Preventive Medicine Officer.
 - (b) Installation Safety Officer.
 - (c) Installation Hospital.
 - (d) Installation Mental Hygiene or Psychiatry Officer.
 - (e) Chaplain's Office.
- (8) Historic and Archaeological Resources.
 - (a) Installation Environmental Specialist.
 - (b) Installation Historian or Architect.
 - (c) Corps District Archaeologist.
- (9) Land Use Impacts.
 - (a) Installation Master Planner.
 - (b) Corps District Community Planners.
- (10) Socioeconomic.
 - (a) Personnel Office.
 - (b) Public Information Officer.
 - (c) Corps District Economic Planning Staff.
- (11) Water Quality.
 - (a) Installation Environmental Specialist.
 - (b) Installation Preventive Medicine Officer.
 - (c) Corps District Environmental Staff.
- (12) Noise.
 - (a) Preventive Medicine Officer.
 - (b) Directorate of Engineering and Housing.
 - (c) Installation Master Planner. Other sources are as follows:

1. Within the DA, there are sources such as the Army Environmental Hygiene Agency (AEHA), the major Army command (MACOM) environmental office, the Army Environmental Office, Corps of Engineers (COE) research laboratories (for example, Construction Engineering Research Laboratory, Waterways Experiment Station, and Cold Regions Research Laboratory), Huntsville Division, and the military assistance offices in certain districts.

2. State agencies are another potential source of information. The appropriate POC within these agencies may be obtained from the installation environmental office.

3. Another source is directories such as CERL Technical Report N-40,² as discussed in Engineering Technical Note 79-6.³

¹ From: John Fittipaldi, et al., Handbook for Environmental Impact Analysis and Planning, Technical Report N-130, U.S. Army Construction Engineering Research Laboratory (CERL), October 1982, pp 133-143.

² R. Lacey, et al., Compendium of Administrators of Land Use and Related Programs, Technical Report N-40/ADA057226 (CERL July 1978).

³ Coordination with Federal and State Land Use Agencies, Engineer Technical Note 79-6 (Department of the Army (DA), 8 February 1979).

4. Another source on mitigation procedures is Ramifications/Mitigation statements from CERL's Environmental Impact Computer System (EICS).⁴

(5) Local interest groups may also be able to help identify potential mitigation measures.

c. Example mitigation techniques. Several different mitigation techniques have been used on military installations for a number of years. The following examples illustrate the variety of possible measures:

(1) There are maneuver restrictions in areas used extensively for tracked vehicle training. These restrictions are not designed to infringe on the military mission, but rather to reduce the amount of damage to the training area.

(2) Aerial seeding has been done on some installations to reduce erosion problems.

(3) Changing the time and/or frequency of operations has been used. This may involve changing the season of the year, the time of day, or even day of the week for various activities. This avoids noise impacts as well as aesthetic, transportation, and some ecological problems.

(4) Reducing the effects of construction has involved using techniques that keep heavy equipment away from protected trees and quickly reseeded areas after construction.

d. Mitigation alternatives. Consideration of all practical mitigation alternatives are considered. The emphasis is not on what can be theoretically accomplished, but on what can be accomplished for each alternative.

(1) Practical mitigations are those that the proponent can accomplish within the project's constraints such as manpower and money. Practical measures must be defined at the installation level; what may be practical on one post or at one time may not be practical on another. A number of items determine what is practical, including military mission, manpower restrictions, cost, institutional barriers, technical feasibility, and public acceptance. Practicality does not necessarily ensure resolution of conflicts among these items, rather it is the degree of conflict that determines practicality.

(2) The previous examples involved some amount of conflict in all these areas. Although mission conflicts are inevitable, they are not insurmountable. Therefore, the proponent should be cautious about declaring all mitigations impracticable and should carefully consider any manpower requirements. This may be a greater restriction than military mission conflicts.

(3) There is no standard rule of thumb applicable to mitigation activities. The key point concerning both the manpower and cost constraints is that unless money is actually budgeted and manpower assigned, the mitigation does not exist. This will require coordination by the proponent office early in the process to allow enough time to get the mitigation activities into the budget cycle. If the mitigation is not funded on schedule with the action, the action can be judicially stopped.

(4) Mitigations that do not fall directly within the definition of practical must still be considered, including those to be accomplished by other agencies. The proponent must coordinate with these agencies so that they can plan to obtain the necessary manpower and funds. Mitigations that were considered but rejected must be discussed, along with the reason for the rejection, within the EIS.

F-3. Monitoring

Monitoring is an integral part of any mitigation system and a way to examine an environmental mitigation. The two basic types of monitoring are as follows:

a. Enforcement monitoring. Enforcement monitoring ensures that mitigation is being performed as described in the environmental document and ensuring that mitigation requirements and penalty clauses are written into any contracts. It also includes ensuring that these provisions are enforced. Before mitigation can take place on-post, it must be budgeted, scheduled, and the necessary manpower

must be assigned. Any changes required in post regulations must be completed and enforced. The actual mitigation (for example, aerial seeding of a training area) must be performed. Enforcement monitoring involves the monitoring of all these activities.

b. Effectiveness monitoring. Effectiveness monitoring measures the success of the mitigation effort and/or the environmental effect. This must be a scientifically based quantitative investigation. Generally, qualitative measurements are not acceptable. However, it is not necessary to measure everything that may be affected by the action, only enough information to judge the method's effectiveness.

F-4. Establishing a monitoring system

Establishment of a monitoring system must involve all appropriate offices that will be involved in its implementation. When evaluating several different potential monitoring systems, the ability to perform the monitoring is the most critical factor. This means that manpower—both on post and outside expertise—must be available. Sufficient funds must also be available for the monitoring process. Figures F-1 through F-3 illustrate the steps in establishing a monitoring system. Figure F-1 is designed to help select the type of monitoring system needed. Figure F-2 shows the responsibilities of the lead agency in establishing an enforcement monitoring program. Figure F-3 illustrates the steps necessary to establish an effectiveness monitoring program.

F-5. Type of monitoring program

AR 200-1 and other laws and regulations help determine the types of monitoring program. There are five basic considerations for monitoring programs (fig F-1):

a. Legal requirements. Permits for some actions will require that a monitoring system be established, for example, dredge and fill permits from the Corps of Engineers. These will generally require both enforcement and effectiveness monitoring programs.

b. Protected resources. These include Federal- or State-listed endangered or threatened species, important historic or archaeological sites (whether or not these are included on the National Register of Historic Places), wilderness areas, wild and scenic rivers, and other public or private protected resources. Private protected resources include areas such as Audubon Society Refuges, Nature Conservancy lands, or any other land that would be protected by law if it were under Government ownership, but is privately owned. If any of these resources are affected, an effectiveness and enforcement monitoring program must be undertaken in conjunction with the Federal, State, or local agency that manages the type of resource.

c. Major environmental controversy. If a controversy remains regarding the effect of an action or the effectiveness of a mitigation, an enforcement and effectiveness monitoring program must be undertaken. Controversy includes not only scientific disagreement about the mitigation's effectiveness, but also public interest or debate.

d. Mitigation outcome. The probability of the mitigation's success must be carefully considered. The proponent must know if the mitigation has been successful elsewhere. The validity of the outcome should be confirmed by expert opinion. However, the proponent should note that a certain technique, such as artificial seeding with the natural vegetation, that may have worked successfully in one area, may not work in another.

e. Changed conditions. The final consideration is whether any condition, such as the environmental setting, have changed (for example, a change in local land use around the area, or a change in project activities, such as increased amount of acreage being used or an increased movement of troops). Such changes will require preparation of a supplemental impact evaluation and additional monitoring. If none of these conditions are met (that is, requirement by law, protected resources, no major controversy is involved, effectiveness

⁴ L. V. Urban, et al., Computer-aided Environmental Impact Analysis for Construction Activities; User Manual, Technical Report E-50/ADA008988 (CERL, March 1975).

of the mitigation is known, and the environmental or project conditions have not changed), then only an enforcement monitoring program is needed. Otherwise, both an enforcement and effectiveness monitoring program will be required.

F-6. Enforcement monitoring program development

The development of an enforcement monitoring program is governed by who will actually perform the mitigation (fig F-2). The following three different groups may actually perform the work: a contractor, a cooperating agency, or a lead agency (in-house). However, the lead agency is ultimately responsible for performing any mitigation activities.

a. Contract performance. Several provisions must be made in work to be performed by contract. The lead agency must ensure that contract provisions include the performance of the mitigation activity and that penalty clauses are written into the contracts. It must provide for timely inspection of the mitigation measures and is responsible for enforcing all contract provision.

b. Cooperating agency performance. The lead agency must ensure that if a cooperating agency performs the work, it understands its role in the mitigation. The lead agency must determine and agree upon how the mitigation measures will be funded. It must also ensure that any necessary formal paperwork such as cooperating agreements is complete.

c. Lead agency performance. If the lead agency performs the mitigation, the proponent has several responsibilities to—

- (1) Ensure that needed tasks are performed.
- (2) Provide appropriate funding in the project budget.
- (3) Make arrangements for necessary manpower allocations.
- (4) Make any necessary changes in the agency (installation) regulations (such as, environmental or range regulations).

d. Results. In any case, whether the mitigation is performed by contract, a cooperating agency, or the lead agency, all results will be sent to the Public Affairs Office and the Environmental Office on post.

F-7. Effectiveness monitoring program development

Effectiveness monitoring is the most difficult to establish (fig F-3). The responsible agent, such as the Director of Training, should coordinate the monitoring with the Environmental Office.

a. Determination of what is to be monitored. The first step in this type of monitoring program is to determine what must be monitored. This determination should be based on criteria discussed during the establishment of the system; for example, the legal requirements, protected resources, area of controversy, known effectiveness, or changed conditions. Initially, this can be a very broad statement, such as reduction of impacts on a particular stream by a combination of replanting, erosion control devices, and range regulations.

b. Finding expertise. The next step is finding the expertise necessary to establish the monitoring system. The expertise may be available on-post; table F-1 lists potential sources on a military installation. If it is not available, it must be obtained from an outside source. Directories such as CERL Technical Report N-40⁵ may provide the needed information. In addition, local universities may have specialists and local interest groups who can identify experts within a particular field. This may be particularly helpful if a mitigation is considered controversial.

c. Establishment of a program. After a source of expertise is

located, the program can be established using the following five technical criteria:

(1) Any parameters used must be measurable; for example, the monitor must be quantitative and statistically sound.

(2) A baseline study must be completed before the monitoring begins in order to identify the actual state of the system prior to any disturbance.

(3) The monitoring system must have a control, so that it can isolate the effects of the mitigation procedures from effects originating outside the action.

(4) The system's parameters and means of measuring them must be replicable.

(5) Parameter results must be available in a timely manner so that the decisionmaker can take any necessary corrective action before the effects are irreversible.

d. Program management. There are several program management considerations. First, not every mitigation has to be monitored separately. The effectiveness of several mitigation actions can be determined by one measurable parameter. For example, the turbidity measurement from a stream can include the combined effectiveness of mitigation actions such as reseeding, maneuver restrictions, and erosion control devices. However, if a method combines several parameters and a critical change is noted, each mitigation measurement must be examined to determine the problem.

e. Initiation of program. The next step is to initiate the monitoring program. In most cases, a monitor should be established well before the action begins, particularly when biological variables are being measured and investigated. At this stage, any necessary contracts, funding, and manpower assignments must be initiated.

f. Sample collection, data analysis, and coordination. The next step in the monitoring program is sample collection and data analysis. A nontechnical summary of the data analysis should be provided to the Public Affairs Office, which will handle routine information requests related to the program. Technical results from the analysis should be sent to the installation environmental office, which will coordinate them with the proponent. Other related coordination with the concerned public and other agencies, as arranged through development of the mitigation plan, will be handled through the environmental office.

g. Continuation of program.

(1) If the mitigations are effective, the monitoring should be continued. However, even if a noneffective result is obtained, a nontechnical summary should still be sent to the Public Affairs Office. The Environmental Office and the responsible group should reexamine the mitigation measures with the experts. The problem may be either inadequacy of the mitigation measure, in the performance, or in the monitoring.

(2) Once the problem is identified, the responsible group and the experts should determine whether more detailed information is needed, whether the monitoring is being implemented incorrectly, or whether the mitigation is inadequate.

(3) After the problem is resolved, the group must determine whether a different monitoring system should be established. If the old program is adequate, it should be continued; however, if a different program is required, then a new system must be established.

⁵ R. Lacey, et al., Compendium of Administrators of Land Use and Related Programs, Technical Report N-40/ADA057226 (CERL, 1978).

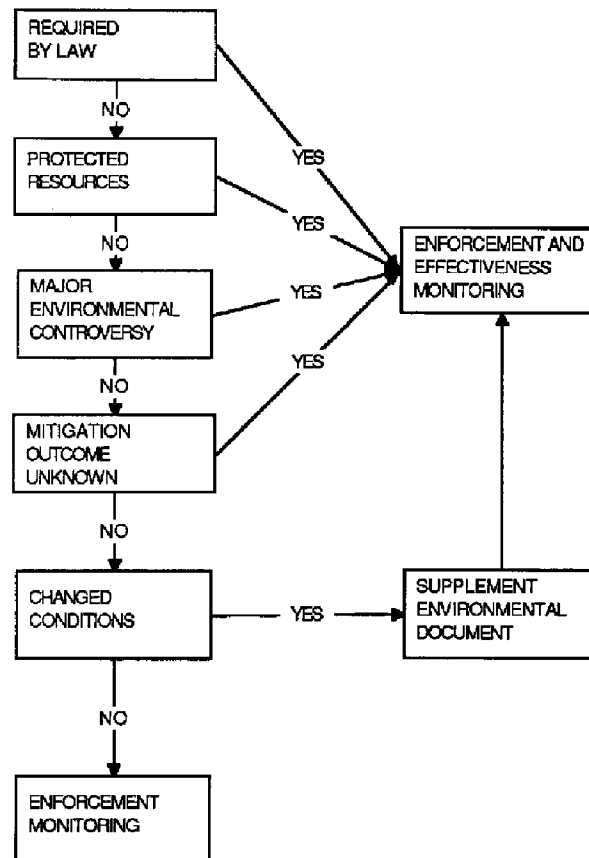


Figure F-1. Monitoring mitigation

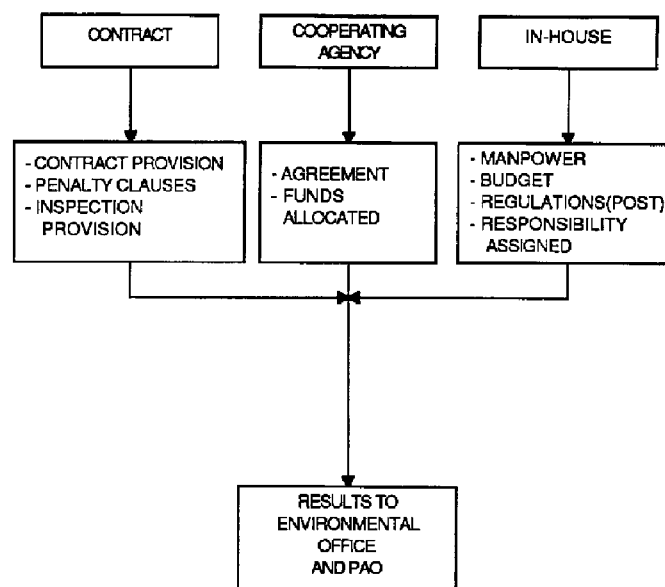


Figure F-2. Enforcement monitoring

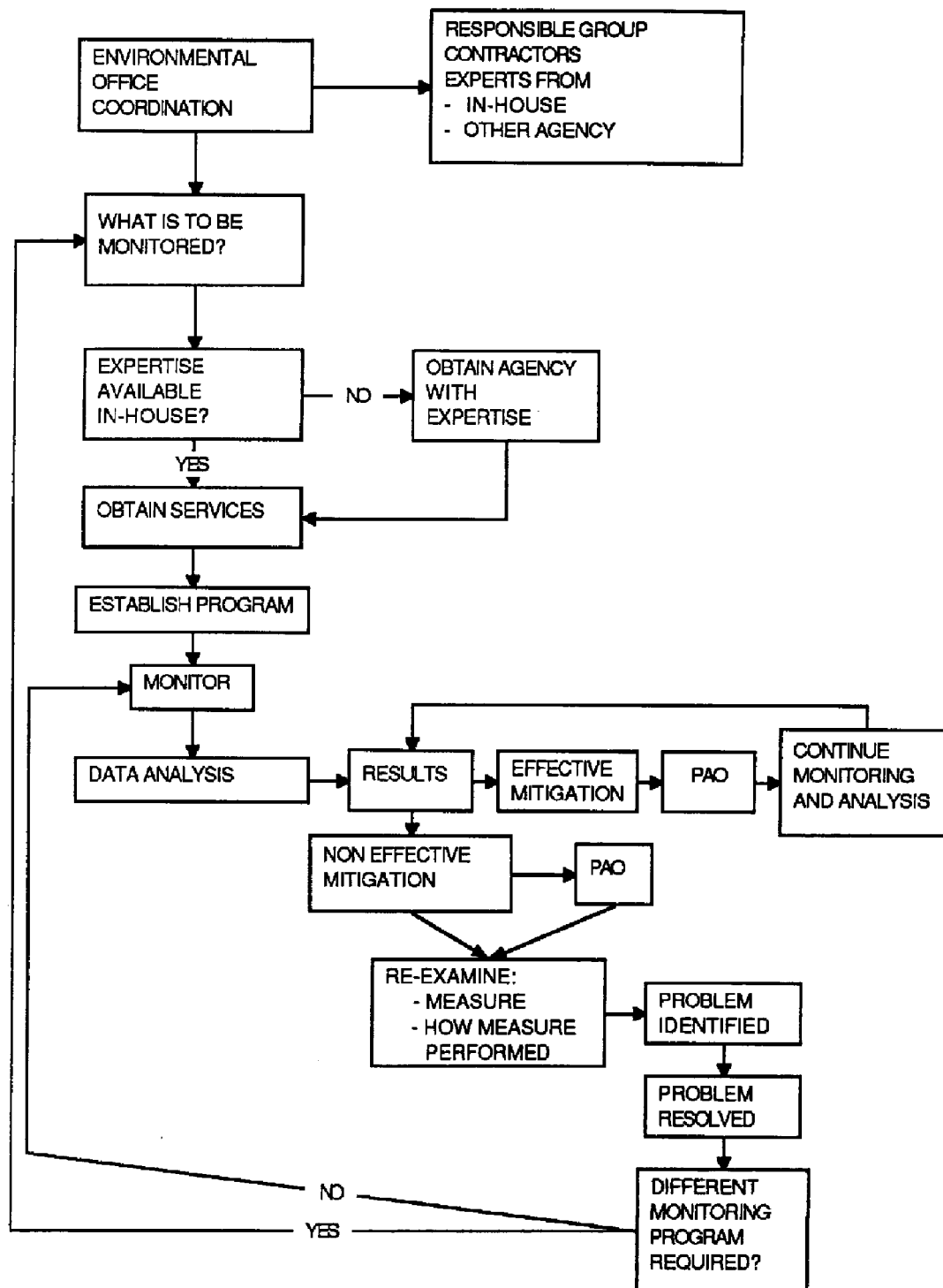


Figure F-3. Effectiveness monitoring

Appendix G Requirements for Environmental Considerations— Global Commons

This information was extracted from Department of Defense Final Procedures issued April 12, 1979 (44 FR 21786).

A. General.

This inclosure implements the requirements of Executive Order 12114 with respect to major Department of Defense actions that do

significant harm to the environment of the global commons. The focus is not the place of the action, but the location of the environment with respect to which there is significant harm. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to Department of Defense activities that affect the global commons.

⁵ R. Lacey, et al., Compendium of Administrators of Land Use and Related Programs, Technical Report N-40/ADA057226 (CERL, 1978).

B. Actions included.

The requirements of this inclosure apply only to major federal actions that do significant harm to the environment of the global commons.

C. Environmental Document Requirements

1. *General.* When an action is determined to be a major federal action that significantly harms the environment of the global commons, an environmental impact statement, as described below, will be prepared to enable the responsible decisionmaking official to be informed of pertinent environmental considerations. The statement may be a specific statement for the particular action, a generic statement covering the entire class of similar actions, or a program statement.

2. *Limitations on Actions.* Until the requirements of this inclosure have been met with respect to actions involving the global commons, no action concerning the proposal may be taken that does significant harm to the environment or limits the choice of reasonable alternatives.

3. *Emergencies.* Where emergency circumstances make it necessary to take an action that does significant harm to the environment without meeting the requirements of this inclosure, the DOD component concerned shall consult with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics). This includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property.

4. *Combining Documents.* Environmental documents may be combined with other agency documents to reduce duplication. If an environmental impact statement for a particular action already exists, regardless of what Federal agency prepared it, no new statement is required by this directive.

5. *Collective Statements.* Consideration should be given to the use of generic and program statements. Generic statements may include actions with relevant similarities such as common timing, environmental effects, alternatives, methods of implementation, or subject matter.

6. *Tiering.* Consideration should be given to tiering of environmental impact statements to eliminate repetitive discussions of the same issue and to focus the issues. Tiering refers to the coverage of general matters in broader environmental impact statements, with succeeding narrower statements or environmental analyses that incorporate by reference the general discussion and concentrate only on the issues specific to the statement subsequently prepared.

7. *Lead Agency.* When one or more other Federal agencies are involved with the Department of Defense in an action or program, a lead agency may be designated to supervise the preparation of the environmental impact statement. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

- (a) The magnitude of agency involvement;
- (b) Which agency or agencies have project approval and disapproval authority;
- (c) The expert capabilities concerning the environmental effects of the action;
- (d) The duration of agency involvement; and
- (e) The sequence of agency involvement.

8. *Categorical Exclusions.* The Department of Defense may provide categorical exclusions for actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion no environmental assessment or environmental impact statement is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) and will be identified in attachment 1 to this inclosure. DOD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit recommendation for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

9. *Environmental Assessments.* The purpose of an environmental assessment is to assist DOD components in determining whether an environmental impact statement is required for a particular action. The assessment should be brief and concise but should include sufficient information on which a determination can be made whether the proposed action is a major and federal, and whether it significantly harms the environment of the global commons. As a minimum, the assessment should include consideration of the need for the proposed action and the environmental effect of the proposed action and the environmental consideration of the need for the proposed action and the environmental effect of the proposed action. The environmental assessment will be made available to the public in the United States upon request, but there is no requirement that it be distributed for public comment.

D. Environmental Impact Statements

1. *General.* Environmental impact statements will be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed action on the global commons and the reasonable alternatives. If an action requiring an environmental impact statement also has effects on the environment of a foreign nation or on a resource designated as one of global importance, the statement need not consider or be prepared with respect to these effects. The procedures for considering these effects are set out in inclosure 2.

2. *Draft Statement.* Environmental impact statements will be prepared in two stages and may be supplemented. The first, or draft statement, should be sufficiently complete to permit meaningful analysis and comment. The draft statement will be made available to the public, in the United States, for comment. The Department of State, the Council on Environmental Quality, and other interested federal agencies will be informed of the availability of the draft statement and will be afforded an opportunity to comment. Contacts with foreign governments are discussed in subsection D.4 of the directive and subsection D.11. of this inclosure.

3. *Final Statement.* Final statements will consider, either individually or collectively, substantive comments received on the draft statement. The final statement will be made available to the public in the United States.

4. *Supplemental Statement.* Supplements to the draft or final statement should be used when substantial changes to the proposed action are made relative to the environment of the global commons or when significant new information or circumstances, relevant to environmental concerns, bears on the proposed action or its environmental effects of the global commons. Supplemental statements will be circulated for comment as in subsection 2 above unless alternative procedures are approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

5. *Statement Content.* The statement will include: a section on consideration of the purpose of and need for the proposed action; a section on the environmental consequences of the proposed action and reasonable alternatives; a section that provides a succinct description of the environment of the global commons affected by the proposed action and reasonable alternatives; and a section that analyzes, in comparative form, the environmental effects on the global commons of the proposed action and reasonable alternatives.

6. *Incomplete Information.* The statement should indicate when relevant information is missing due to unavailability or scientific uncertainty.

7. *Hearings.* Public hearings are not required. Consideration should be given in appropriate cases to holding or sponsoring public hearings. Factors in this consideration include: foreign relations sensitivities; whether the hearings would be an infringement or create the appearance of infringement on the sovereign responsibilities or another government; requirements of domestic and foreign governmental confidentiality; requirements of national security; whether meaningful information could be obtained through hearings; time considerations; and requirements for commercial confidentiality. There is no requirement that all factors listed in this section be considered when one or more factors indicate that public hearings

would not produce a substantial net benefit to those responsible for authorizing or approving the proposed action.

8. *Decision.* Relevant environmental documents developed in accordance with this enclosure will accompany the proposal for action through the review process to enable officials responsible for authorizing or approving the proposed action to be informed and to take account of environmental considerations. One means of making an appropriate record with respect to this requirement is for the decisionmaker to sign and date a copy of the environmental impact statement indicating that it has been considered in the decisionmaking process. Other means of making an appropriate record are also acceptable.

9. *Timing.* No decision on the proposed action may be made until the later of 90 days after the draft statement has been made available and notice thereof published in the *Federal Register*, or 30 days after the final statement has been made available and notice thereof published in the *Federal Register*. The 90-day period and the 30-day period may run concurrently. Not less than 45 days may be allowed for public comment. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) may, upon a showing of probable important adverse effect on national security of foreign policy, reduce the 30-day, 45-day, and 90-day periods.

10. *Classified Information.* Environmental assessments and impact statements that address classified proposals will be safeguarded and classified information will be restricted from public dissemination in accordance with Department of Defense procedures (DOD Directives 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any retirement of disclosure in this directive. Only unclassified portions of environmental documents may be disseminated to the public.

11. *Foreign Governments.* Consideration will be given to whether any foreign government should be informed of the availability of environmental documents. Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State. Informal, working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

Appendix H

Requirements for Environmental Considerations—Foreign Nations and Protected Global Resources

This information was extracted from Department of Defense Final Procedures issued April 12, 1979 (44 FR 21786).

A. General.

This inclosure implements the requirements of Executive Order 12114 to provide for procedural and other actions to be taken to enable officials to be informed of pertinent environmental considerations when authorizing or approving certain major Department of Defense actions that do significant harm to the environment of foreign nation or to a protected global resource.

B. Actions included.

1. The requirements of this inclosure apply only to the following actions:

a. Major federal actions that significantly harm the environment of a foreign nation that is not involved in the action. The involvement of the foreign nation may be directly by participation with the United States in the action, or it may be in conjunction with another participating nation. The focus of this category is on the geographical location of the environmental harm and not on the location of the action.

b. Major federal actions that are determined to be significant harm to the environment of foreign nation because they provide to

that nation: (1) a product, or involve a physical project that produces a principal product, emission, or effluent, that is prohibited or strictly regulated by Federal law in the United States because its toxic effects of the environment create a serious public health risk; or (2) a physical project that is prohibited or strictly regulated in the United States by Federal law to protect the environment against radioactive substances. Included in the category of “prohibited or strictly regulated” are the following: asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene.

c. Major federal actions outside the United States that significantly harm natural or ecological resources of global importance designated for protection by the President or, in case of such a resource protected by international agreement binding on the United States, designated for protection by the Secretary of State are listed in attachment 1 to this inclosure. 2. The actions prescribed by this inclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to federal actions that do significant harm to the environment of foreign nations and protected global resources as described in subsection E.1. above. No action is required under this inclosure with respect to federal actions that affect only the environment of a participating or otherwise involved foreign nation and that do not involve providing products or physical projects producing principal products, emissions, or effluents that are prohibited or strictly regulated by federal law in the United States, or resources of global importance that have been designated for protection.

C. Environmental Document Requirements

1. General.

a. There are two types of environmental documents officials shall use in taking account of environmental consideration for actions covered by this inclosure:

(1) Environmental studies—bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant; and

(2) Environmental reviews—concise reviews of the environmental issues involved that are prepared unilaterally by the United States.

b. This section identifies the procedures for the preparation of environmental studies or reviews when required by this inclosure and the exceptions from the requirement to prepare environmental studies or reviews. If an environmental document already exists for a particular action, regardless of what Federal agency prepared it, no new document is required by this inclosure.

2. *Lead Agency.* When one or more other Federal agencies are involved with the Department of Defense in an action or program, a lead agency may be designated to supervise the preparation of environmental documentation. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation—

a. The management of agency involvement;

b. Which agency or agencies have project approval and disapproval authority;

c. The expert capabilities concerning the environmental effects of the action;

d. The duration of agency involvement; and

e. The sequence of agency involvement.

3. *Exemptions.* There are general exemptions from the requirements of this inclosure provided by Executive Order 12114, and the Secretary of Defense has the authority to approve additional exemptions.

a. *General Exemptions.* The following actions are exempt from the procedural and other requirements of this inclosure under general exemptions established for all agencies by Executive Order 12114:

(1) Actions that DOD components concerned determines do not do significant harm to the environment outside the United States or to a designated resource of global importance.

(2) Actions taken by the President. These include: signing bills into law; signing treaties and other international agreements; the promulgation of Executive Orders; Presidential proclamations; and the issuance of Presidential decisions, instructions, and memoranda. This includes actions taken within the Department of Defense to prepare or assist in preparing recommendations, advice, or information for the President in connection with one of these actions by the President. It does not include actions taken within the Department of Defense to implement or carry out these instruments and issuances after they are promulgated by the President.

(3) Actions taken by or pursuant to the direction of the President or a cabinet officer in the course of armed conflict. The term "armed conflict" refers to: hostilities for which Congress has declared war or enacted a specific authorization for the use of armed forces; hostilities or situations for which a report is prescribed by section 4(a)(1) of the War Powers Resolution, 50 U.S.C.A. 1543(a)(1) (Supp. 1978); and other actions by the armed forces that involve defensive use or introduction of weapons in situations where hostilities occur or are expected. This exemption applies as long as the armed conflict continues.

(4) Actions taken by or pursuant to the direction of the President or a cabinet officer when the national security or national interest is involved. The determination that the national security or national interest is involved in actions by the Department of Defense must be made in writing by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(5) The activities of the intelligence components utilized by the Secretary of Defense under Executive Order 12036.43 Fed. Reg. 3674 (1978). These components include the Defense Intelligence Agency, the National Security Agency, the offices for the collection of specialized intelligence through reconnaissance programs, the Army Office of the Assistant Chief of Staff for Intelligence, the Office of Naval Intelligence, and the Air Force Office of the Assistant Chief of Staff for Intelligence.

(6) The decisions and actions of the Office of the Assistant Secretary of Defense (International Security Affairs), the Defense Security Assistance Agency, and the other responsible offices within DOD components with respect to arms transfers to foreign nations. The term "arms transfers" includes the grant, loan, lease, exchange, or sale of defense articles or defense services to foreign government or international organizations, and the extension or guarantees of credit in connection with these transactions.

(7) Votes and other actions in international conferences and organizations. This includes all decisions and actions of the United States with respect to representation of its interests at international organizations, and at multilateral conferences, negotiations, and meetings.

(8) Disaster and emergency relief actions.

(9) Actions involving export licenses, export permits, or export approvals, other than those relating to nuclear activities. This includes: advice provided by DOD components to the Department of State 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1976); advice provided by DOD components to the Department of Commerce with respect to the granting of export licenses under the Export Administration Act of 1969, 50 U.S.C. App. 2401-2413 (1970 & Supp. V 1975); and direct exports by the Department of Defense of defense articles and services to foreign governments and international organizations that are exempt from munitions export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1976). The term "export approvals" does not mean or include direct loans to finance exports.

(10) Actions relating to nuclear activities and nuclear material, except actions providing to a foreign nation a nuclear production or utilization facility, as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility.

b. Additional Exemptions. The Department of Defense is authorized under Executive Order 12114 to establish additional exemptions that apply only to the Department's operations. There are two types of additional exemptions: case-by-case and class.

(1) *Case-by-Case Exemptions.* Exemptions other than those

specified above may be required because emergencies, national security considerations, exceptional foreign policy requirements, or other special circumstances preclude or are inconsistent with the preparation of environmental documentation and the taking of other actions prescribed by this inclosure. The following procedures apply for approving these exemptions:

(a) *Emergencies.* This category includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property. The heads of the DOD components are authorized to approve emergency exemptions on a case-by-case basis. The Department of Defense is required to consult as soon as feasible with the Department of Defense and the Council on Environmental Quality with respect to emergency exemptions. The requirement to consult as soon as feasible is not a requirement of prior consultation. A report of the emergency action will be made by the DOD components head to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall undertake the necessary consultation.

(b) *Other Circumstances.* National security considerations, exceptional foreign policy requirements, and other special circumstances not identified in paragraph C.3.a. above, may preclude or be inconsistent with the preparation of environmental documentation. In these circumstances, the head of the DOD components concerned is authorized to exempt a particular action from the environmental documentation requirements of this inclosure after obtaining the prior approval of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval.

(2) *Class Exemptions.* Circumstances may exist where a class exemption for a group of related actions is more appropriate than a specific exemption. Class exemptions may be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval. Requests for class exemptions will be submitted by the head of the DOD components concerned to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) after coordination with other interested DOD components. Notice of the establishment of a class exemption will be issued as attachment 2 to this inclosure.

4. *Categorical Exclusions.* The Department of Defense is authorized by Executive Order 12114 to provide for categorical exclusions. A categorical exclusion is a category of actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion, no environmental document is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), and will be identified in attachment 3 to this inclosure. DOD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit requests for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

D. Environmental Studies

1. *General.* Environmental studies are one of two alternative types of documents to be used for actions described by paragraph B of this inclosure.

a. An environmental study is an analysis of the likely environmental consequences of the action that is to be considered by DOD components in the decisionmaking process. It includes a review of the affected environment, significant actions taken to avoid environmental harm or otherwise to better the environment, and significant

environmental considerations and actions by the other participating nations, bodies, or organizations.

b. An environmental study is a cooperative action and not a unilateral action undertaken by the United States. It may be bilateral or multilateral, and it is prepared by the United States in conjunction with one or more foreign nations, or by an international body or organization in which the United States is a member or participant. The environmental study, because it is prepared as a cooperative undertaking, may be best suited for use with respect to actions that provide strictly regulated or prohibited products or projects to a foreign nation (B.1.b.) and actions that affected a protected global resource (B.1.c.).

2. *Department of State Coordination.* Communications with foreign governments concerning environmental studies and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

3. *Whether to Prepare an Environmental Study.* The judgment whether the nation is one that would do significant harm to one of the environments covered by this inclosure normally will be made in consultation with concerned foreign governments or organizations. If a negative decision is made, the file will be documented with a record of that decision and the decisionmakers who participated. If a decision is made to prepare a study then, except as provided by this inclosure, no action concerning the proposal may be taken that would do significant harm to the environment until the study has been completed and the results considered.

4. *Content of the Study.* The document is a study of the environmental aspects of the proposed action to be considered in the decisionmaking process. The precise content of each study must be flexible because of such considerations as the sensitivity of obtaining information from foreign governments, the availability of useful and understandable information, and other factors identified under "Limitations," (subsection D.6. below). The study should, however, include consideration of the following:

- a. A general review of the affected environment;
- b. The predicted effect of the action of the environment;
- c. Significant known actions taken by governmental entities with respect to the proposed action to protect or improve the environment; and
- d. if no actions are being taken to protect or enhance the environment, whether the decision not to do so was made by the affected foreign government or international organization.

5. *Distribution of the Study.* Except as provided under "Limitations," (subsection D.6. below), and except where classified information is involved, environmental studies will be made available to the Department of State, the Council on Environmental Quality, other interested Federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the studies, subject to the "Limitations" (subsection D.6., below) and controls on classified information, and furnished copies of the documents. No distribution is required prior to the preparation of the final version of the study or prior to taking the action that caused the study to be prepared.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental studies in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

- a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;
- b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;
- c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved, or

with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by the nation as an interference in its internal affairs and its responsibility to evaluate requirements with respect to the environment;

d. Ensure consideration of;

(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National security requirements. This refers to the protection of classified information and other national security interests;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, particularly where the affected foreign nation is not a participant in the analysis. This may reduce or change substantially the normal content of the environmental study;

(4) The extent of the participation of the DOD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as DOD's role and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the Department of Defense procedures (DOD Directives 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

E. Environmental Reviews

1. *General.* Environmental reviews are the second of the two alternative types of documents to be used for actions covered by paragraph B of this inclosure.

a. An environmental review is a survey of the important environmental issues involved. It includes identification of these issues, and a review of what if any consideration has been or can be given to the involved in taking the action.

b. An environmental review is prepared by the DOD components concerned either unilaterally or in conjunction with another federal agency. While an environmental review may be used for any of the actions identified by section B., it may be uniquely suitable, because it is prepared unilaterally by the United States, to actions that affect the environment of a nation not involved in the undertaking (B.1.a.).

2. *Department of State Coordination.* Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this inclosure will be coordinated with the Department of State. Informal working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

3. *Whether to Prepare an Environmental Review.* Sufficient information will be gathered, to the extent it is reasonably available, to permit an informed judgment as to whether the proposed action would do significant harm to the environments covered by this inclosure. If a negative decision is made, a record will be made of that decision and its basis. If a decision is made to prepare a review, then, except as provided by this inclosure, no action concerning the proposal may be taken that would do significant environmental harm until the review has been completed.

4. *Content of the Review.* An environmental review is a survey of the important environmental issues associated with the proposed action that is to be considered by the DOD component concerned in the decisionmaking process. It does not include all possible environmental issues and it does not include the detailed evaluation required in an environmental impact statement under inclosure 1 of

this directive. There is no foreign government or international organization participation in its preparation, and the content therefore may be circumscribed because of the availability of information and because of foreign relations sensitivities. Other factors are identified under “ Limitations, ” (subsection E.6., below). To the affecting the content extent reasonably practical the review should include consideration of the following:

a. A statement of the action to be taken including its timetable, physical features, general operating plan, and other similar broad-gauge descriptive factors.

b. Identification of the important environmental issues involved;

c. The aspects of the actions taken or to be taken by the DOD component that ameliorate or minimize the impact on the environment; and

d. The actions known to have been taken or to be planned by the government of any participating and affected foreign nations that will affect environmental considerations.

5. *Distribution.* Except as provided under “ Limitations, ” (subsection E.6., below), and except where classified information is involved, environmental reviews will be made available to the Department of State, the Council on Environmental Quality, other interested Federal agencies, and on request, to the public in the United States. Interested foreign governments also may be informed of the reviews and, subject to the “ Limitations ” (subsection E.6., below) and controls on classified information, will be furnished copies of the documents on request. This provision for document distribution is not a requirement that distribution be made prior to taking the action that is the subject of the review.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental reviews in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation of actions in which another nation is involved or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by the nation as an interference in its internal affairs and its prerogative to evaluate requirements with respect to the environment; and

d. Ensure consideration of:

(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National Security requirements. This refers to the protection of classified information;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, and this may reduce or change substantially the normal content of the environmental review;

(4) The extent of the participation of the DOD components concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as the role of the Department of Defense and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the DOD procedures (DOD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

Glossary

Section I Abbreviations

ARNG

Army National Guard

ARSTAF

Army Staff

ASA (I&L)

Assistant Secretary of the Army (Installations and Logistics)

CEQ

Council on Environmental Quality

CERCLA

Comprehensive Environmental Response Compensation and Liability Act

CX

categorical exclusions

DA

Department of the Army

DEIS

draft Environmental Impact Statement

DESOH

Deputy for Environment, Safety, and Occupational Health

DOD

Department of Defense

EA

environmental assessment

EIS

Environmental Impact Statement

EPA

Environmental Protection Agency

FEIS

final Environmental Impact Statement

FNSI

Finding of No Significant Impact

FR

Federal Register

FS

feasibility study

HQDA

Headquarters, Department of Army

I&L

Installation and Logistics

LCED

Life Cycle Environmental Documentation

MACOM

major Army command

NEPA

National Environmental Policy Act

NOA

notice of availability

NOI

Notice of Intent

OASA (I&L)

Office of the Assistant Secretary of the Army, (Installation and Logistics)

OCLL

Office of the Chief of Legislative Liaison

OCPA

Office of the Chief of Public Affairs

OSD

Office of the Secretary of Defense

POC

point of contact

REC

record of environmental consideration

ROD

record of decision

SARA

Superfund Amendments and Reauthorization Act

SOFA

Status of Forces Agreement

Section II Terms

Categorical exclusion (CX)

A category of actions that do not require an EA or an EIS because DA has determined that the actions do not have an individual or cumulative impact on the environment. (Refer to chap 4 for further discussion.)

Closure of a major military installation

(Except where the only significant impacts are socioeconomic with no significant biophysical environmental impact). "Major military installation" is defined in chapter 2 of "Department of Defense Base Structure Report" as, "A contiguous parcel of land with facilities and improvements thereon having a command and control organization providing a full range of BASOPS (base operations) functions in support of assigned missions." Compare with the definition of a "minor installation", which is "under the command of and receives resources support from the commander of another installation which is geographically distant."

Foreign government

A government regardless of recognition by the United States, political factions, and organizations that exercises governmental power outside the United States.

Foreign nations

Any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments. It also refers to any area under military occupation by the United States alone or jointly with any other foreign government. Includes any area that is the responsibility of an international organization of governments also includes contiguous zones and fisheries zones of foreign nations.

Global commons

Geographical areas outside the jurisdiction of any nation. They include the oceans outside territorial limits and Antarctica. They do not include contiguous zones and fisheries zones of foreign nations.

HQDA proponent

As the principal planner, implementer, and decision authority for a proposed action, the HQDA proponent is responsible for the substantive review of the environmental documentation and its thorough consideration in the decisionmaking process.

Major federal action

reinforces, but does not have a meaning independent of, "significantly affecting the environment," and will be interpreted in that context. A federal proposal with "significant effects" requires an environmental impact statement, whether it is "major" or not. Conversely, a "major federal action" without "significant effects" does not necessarily require an EIS.

Preparers

Personnel from a variety of disciplines who write environmental documentation in clear and analytical prose. They are primarily responsible for the accuracy of the document.

Proponent

Proponent identification is dependent on the nature and scope of a proposed action as follows:

a. Any Army structure may be a proponent. For instance, the installation/activity Facility Engineer (FE)/Director of Engineering and Housing becomes the proponent of installation-wide Military Construction Army (MCA) and Operations and Maintenance (O&M) Activity; Commanding General, U.S. Army Training and Doctrine Command (TRADOC) becomes the proponent of a change in initial entry training. The proponent may or may not be the preparer.

b. In general, the proponent is the lowest level decisionmaker. It is the unit, element, or organization that is responsible for initiating and/or carrying out the proposed action. The proponent has the responsibility to prepare and/or secure funding for preparation of the environmental documentation.

Significantly affecting the environment

an action, program or project that would violate existing pollution standards; cause water,

air, noise, soil, or underground pollution; impair visibility for substantial periods of any day; cause interference with the reasonable peaceful enjoyment of property or use of property; create an interference with visual or auditory amenities; limit multiple use management programs for an area; cause danger to the health, safety, or welfare of human life; or cause irreparable harm to animal or plant life in an area. Significant beneficial effects also do occur and must be addressed if applicable. (See 40 CFR 1508.27.)

Section III

Special Abbreviations and Terms

There are no special terms.

Unclassified

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